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1 agreement.  
2 **A. Right.**  
3 Q. What claims are you asking the Court to approve the  
4 settlement of?  
5 **A. In claims that might be had by the parties vis-à-vis**  
6 **each other.**  
7 Q. So any and all claims that they have under the Swaps  
8 or the collateral agreement or the service contracts  
9 or any other contracts --  
10 **A. Yes.**  
11 Q. -- those claims are being resolved by the forbearance  
12 agreement?  
13 **A. To the best of my knowledge, that is true.**  
14 Q. Okay. And the result of the forbearance agreement is  
15 that the City will be able to perform under the  
16 forbearance agreement without being subject to any  
17 liability to any third party?  
18 **A. That is my understanding.**  
19 Q. And so will the Swap counterparties, correct?  
20 **A. That is my understanding.**  
21 Q. It will give you what I'll call a clean closing?  
22 **A. As I said earlier this week, it will bring us to**  
23 **closure and certainty, yes. Earlier today.**  
24 Q. That is also one of the values of this agreement to  
25 both and you the Swap counterparties, you the City?

1 lawyer.  
2 **A. That's a fair statement.**  
3 Q. And isn't it also fair -- I will tell you I have as  
4 well, but --  
5 **A. Right.**  
6 Q. Isn't it common that settlement agreements typically  
7 involve releases of liability by the parties against  
8 one another?  
9 **A. It is not uncommon for there to be releases in**  
10 **settlement agreements.**  
11 Q. And I will tell you I actually was racking my brain to  
12 see whether I ever entered into a settlement agreement  
13 that didn't have a release. I couldn't think of one.  
14 **Have you ever entered into a settlement agreement that**  
15 **didn't have a release?**  
16 **A. Yes.**  
17 Q. Okay. You have?  
18 **A. Yes, I have.**  
19 Q. Okay. Do you know whether the forbearance agreement  
20 contains a release of claims by the parties against  
21 one another?  
22 **MR. SHUMAKER:** Objection, calls for legal  
23 conclusion.  
24 You can answer.  
25 **A. Okay. I'd have to read through it and consult with my**

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1 **A. Right.**  
2 Q. Which is that it absolves you for any liability in  
3 connection with the relevant agreements?  
4 **MR. SHUMAKER:** Objection to form.  
5 **BY MR. HACKNEY:**  
6 Q. As a result of performance under the forbearance  
7 agreement, correct?  
8 **MR. SHUMAKER:** Objection calls for  
9 speculation.  
10 **A. My understanding is that it provides us with closure**  
11 **and finality regarding any claims and relationships**  
12 **that the parties have.**  
13 **BY MR. HACKNEY:**  
14 Q. Okay. And there's no trailing liability?  
15 **A. That is correct.**  
16 Q. And just for the record, if I asked to you assess the  
17 likelihood of success of all of the different claims  
18 that are being resolved by the forbearance agreement,  
19 you would assert the attorney-client privilege and  
20 refuse to answer?  
21 **A. That is correct. I have made no independent**  
22 **assessment outside of any conversation I would have**  
23 **had with counsel and my advisors.**  
24 Q. Now, Mr. Orr, I'm going to speculate you may have  
25 negotiated a settlement or two in your life as a

1 counsel to make sure. I know the agreement speaks for  
2 itself.  
3 **BY MR. HACKNEY:**  
4 Q. It does, but as you sit here today, I take it you  
5 reviewed the forbearance agreement in connection with  
6 the preparation for your deposition?  
7 **A. Maybe not as in depth as you might think.**  
8 Q. Okay. I know you have a lot on your plate.  
9 **A. I have a lot on my plate.**  
10 Q. But I guess I'm saying are you seriously unaware as to  
11 whether there's a release in the forbearance  
12 agreement?  
13 **A. Seriously or not, I think the forbearance agreement**  
14 **resolved all claims between the parties. Sitting here**  
15 **today without examining it, I'm not aware as to**  
16 **whether or not it specifically has a release.**  
17 Q. Okay. So the -- whether it's in the forbearance  
18 agreement or in the effect of its approval, it  
19 operates as a release for everyone involved?  
20 **A. Yeah. The reality is -- when you asked me the**  
21 **question before as to whether or not it has a release,**  
22 **the reality is that to the extent you asked -- I**  
23 **believe in the motion you asked for assumptions and**  
24 **9019 settlement that the order might well contain a**  
25 **release so -- I wasn't trying to be truculent with**

1 you. I'm just saying that, yes, the effect of the  
2 approval of the agreement should have that impact.  
3 Q. I'm not going to try to go claim by claim because your  
4 understanding is it releases all claims of the Swap  
5 counterparties, the service corporations, and the City  
6 against one another?  
7 A. Yes.  
8 Q. Now, the Swap insurers, as part of the forbearance  
9 agreement, they get a release of their insurance  
10 obligations under the Swap in the event the City  
11 directs an optional termination, correct?  
12 A. Yes, I believe that's true.  
13 Q. And this was one of the things that the City has  
14 touted, which is to say, hey, Swap insurers, pipe down  
15 this is good for you, right?  
16 MR. SHUMAKER: Objection to form.  
17 A. Yeah, without characterizing, you know, the colloquial  
18 characterization, yes, we think that's a benefit.  
19 BY MR. HACKNEY:  
20 Q. That's a concept that you've argued in your papers --  
21 A. Yes.  
22 Q. -- as to why the Swap insurers should be happy?  
23 A. Yes.  
24 Q. Now, do you understand you -- you have argued that  
25 this is a benefit to the Swap insurers under the

1 under the agreement?  
2 A. As a layperson, I really haven't examined it.  
3 Q. So don't know one way or the other?  
4 A. Don't know one way or the other.  
5 Q. Do you have a view as to whether Syncora or FGIC, for  
6 that matter, can sue to enforce the agreement?  
7 A. I don't have one way or the other.  
8 Q. They may have, they may not have?  
9 A. Yeah. I'd probably weigh on the side of they don't,  
10 but I -- I don't have a view one way or the other.  
11 Q. And have you considered the possibility that if they  
12 don't have the right to sue to enforce the agreement,  
13 that they also would not have the right to sue to  
14 enforce the release that's in the agreement?  
15 MR. SHUMAKER: Objection --  
16 A. They might or they might --  
17 MR. SHUMAKER: -- calls for a legal  
18 conclusion.  
19 A. They might or they might not.  
20 BY MR. HACKNEY:  
21 Q. And let's be frank. That's not your concern, right?  
22 A. Well, to be honest with you, you know, without getting  
23 into whether or not there may be equitable rights,  
24 estoppel, third party intended, unintended beneficiary  
25 rights, things along those lines, what I do know --

1 forbearance agreement, correct?  
2 A. Yes, I believe so.  
3 Q. Are the swap insurers third party beneficiaries as you  
4 understand it as the signatories to the agreement --  
5 of the agreement?  
6 MR. SHUMAKER: Objection, calls for a legal  
7 conclusion.  
8 A. Here, I'm not acting as a lawyer as I understand it.  
9 I'll have to decline from answering whether or not  
10 they're third party beneficiaries. As you know,  
11 they're intended beneficiaries, incidental  
12 beneficiaries. A lot of these questions are questions  
13 of fact, so that would draw me into a legal analysis  
14 and I'll stay away from that.  
15 BY MR. HACKNEY:  
16 Q. Let me -- let me -- let me -- what I'll do then is  
17 I'll ask you your understanding as a layperson --  
18 A. Okay.  
19 Q. -- because you are -- you can say that you're acting  
20 as a layperson --  
21 A. I am.  
22 Q. -- so to speak.  
23 A. Yes.  
24 Q. Okay. As a layperson person, do you have a view one  
25 way as to whether Syncora is a third party beneficiary

1 incidental benefits -- what I do know is the  
2 agreement, and what we've said is it provides a  
3 benefit to the insured.  
4 Q. That's right, but you obviously don't represent the  
5 insured, you represent the City?  
6 A. I am employed by the governor on behalf of the City,  
7 that is correct.  
8 Q. And so if the insurer can't enforce the agreement to  
9 take advantage of the release, that's the insurer's  
10 problem, correct?  
11 A. Well, without characterizing whether or not it's their  
12 problem or so, my fiduciary duty runs to the City in  
13 its interest; it does not necessarily run to Syncora.  
14 Q. Yeah. Can we agree that you certainly didn't  
15 negotiate into the agreement any specific provision  
16 granting the insurers the right to sue to enforce that  
17 provision?  
18 A. I made no instruction to my team to negotiate such a  
19 provision.  
20 Q. In entering into the forbearance agreement, did you  
21 consider whether or not the automatic stay would apply  
22 to cash trapping if the City filed for bankruptcy?  
23 MR. SHUMAKER: Objection, calls for a legal  
24 conclusion.  
25 A. Without getting -- here again, there were discussions

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1 because, quite frankly, at the time we were in  
2 negotiating this agreement in June, we were hoping  
3 that this agreement and its announcement was for other  
4 creditors to -- and other stakeholders, including the  
5 labor side, to come in and negotiate additional  
6 agreements. So we may have had discussion about what  
7 the impact, if we filed bankruptcy, would have been,  
8 but, frankly, at this time we were hoping we were  
9 going to get a round of agreements in place.

10 BY MR. HACKNEY:

11 Q. You knew that as of July 15th, when you executed the  
12 forbearance agreement, that bankruptcy was possible?

13 A. Oh, sure. We knew it was possible, yeah.

14 Q. Fair to say that by July 15th, given all the work that  
15 was going on, you were of the view that it was likely?

16 A. No, not really. We had been sued -- the governor and  
17 the treasurer had been sued a few weeks before that.  
18 The following week I believe one union had joined in  
19 that suit and the Monday of the week after that, the  
20 governor and I were sued, and I believe July -- I  
21 don't have a calendar. I believe July 15th was that  
22 Monday.

23 Q. It was.

24 A. Yes. So we signed this agreement and, frankly, even  
25 at that time, because there was a whole lot of things

1 A. No. I -- let's be clear. I think we had them before.  
2 I think we had them around that time because in that  
3 week, when I was sued that Monday, there were  
4 discussions about what they may be and we were signing  
5 this agreement at the time.

6 Q. If I ask you about the specifics of the conversations  
7 you had about whether the automatic stay applied and  
8 the likelihood that it would or wouldn't, you'll  
9 decline to answer those questions on the basis of the  
10 attorney-client privilege, correct?

11 A. Yes, again, today I would have to do that.

12 Q. The one thing I will say that we can agree on, though,  
13 is that if the automatic stay did bar cash trapping,  
14 that would be valuable to the City because at least  
15 during the pendency of the bankruptcy it would then  
16 have access to the casino revenues, correct?

17 A. Well, it's -- here again, it's a hypothetical and  
18 contingent question, but I take your meaning, and what  
19 I would say is I think certainly one of the benefits  
20 of the automatic stay is that you maintain the status  
21 quo and access to cash. There are also provisions  
22 however in the bankruptcy code -- I'm not acting as an  
23 attorney, but I am aware -- of Safe Harbor provisions  
24 related to certain financial instruments and you have  
25 to factor that in as well.

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1 going on, there was litigation, there were stays in  
2 place, there were appeals to the state court, it  
3 certainly was possible and we were with doing  
4 contingency planning given the paper, but we have not  
5 made any determination at that point as to whether or  
6 not, excuse me, we were going to file.

7 Q. It was certainly possible enough that it behooved you  
8 to analyze whether the automatic stay might be a way  
9 to get access to the casino revenues, correct?

10 A. Yeah, I don't recall whether or not we did it then or  
11 before or just during that week, but -- but we --  
12 there was some discussion about the impact of the  
13 automatic stay, yes.

14 Q. So is it possible that you did not evaluate the  
15 applicability of the automatic stay in the event of a  
16 bankruptcy prior to executing the forbearance  
17 agreement?

18 MR. SHUMAKER: Objection --

19 A. No.

20 MR. SHUMAKER: -- asked and answered.

21 A. No. What I said is at some point during that time or  
22 even prior we had to have those discussions.

23 BY MR. HACKNEY:

24 Q. You may have had them in advance of July 15th, you may  
25 not have, you just can't remember?

1 Q. And those are?

2 COURT REPORTER: Can you please slow down?

3 THE WITNESS: I'm sorry.

4 BY MR. HACKNEY:

5 Q. Those are risk factors that might make the automatic  
6 stay not applicable?

7 A. That's correct.

8 MR. SHUMAKER: Objection, calls for a legal  
9 conclusion.

10 A. I was informed without telling specific --

11 BY MR. HACKNEY:

12 Q. Right.

13 A. -- conversations that those are issues you have to  
14 take into consideration.

15 Q. And so let me try and collapse this if I can. If I  
16 ask you about whether the casino revenues are special  
17 revenues being applied to indebtedness, you will  
18 refuse to answer?

19 MR. SHUMAKER: You can ask him whether he  
20 considered them, but in terms of likelihood of success  
21 or communication between --

22 BY MR. HACKNEY:

23 Q. I'll do it that way.

24 Did you consider whether there were special  
25 revenues that were accepted from the automatic stay

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1 under 922(d)?  
 2 **A. We considered all of these issues including the**  
 3 **interaction 922(d) with 362 and I considered them in**  
 4 **the context with my counsel.**  
 5 **Q. Okay. You considered whether 362(b)(17) exception for**  
 6 **Swap collateral applied?**  
 7 **A. Yes.**  
 8 **Q. Did you consider whether the collateral account --**  
 9 **rather, the gaming revenues were even property of the**  
 10 **estate at all?**  
 11 **A. Yes.**  
 12 **Q. So you considered all those questions.**  
 13 **A. Um-hm.**  
 14 **Q. Your counsel rendered advice to you about the**  
 15 **likelihood, the pros and cons of the arguments, and**  
 16 **you're not at liberty to provide that advice to us**  
 17 **because it would invade the attorney-client privilege?**  
 18 **A. Yes, I believe that's correct.**  
 19 **Q. But I do want to get -- I do want to just get your**  
 20 **agreement that the question is important to at least**  
 21 **one of the benefits of the forbearance agreement which**  
 22 **was the interim access to cash during the optional**  
 23 **termination period.**  
 24 **A. I think the question is relevant.**  
 25 **Q. Yeah.**

1 because you might be able to get longer access to cash  
 2 from the automatic stay than you were getting from the  
 3 forbearance agreement, correct?  
 4 **A. Here again, that's a contingent it might, but that has**  
 5 **to be drawn up also in discussion of potential risk**  
 6 **that Safe Harbor provision would allow the**  
 7 **counterparties to exercise their rights and therefore**  
 8 **obviate any benefits the City could receive from the**  
 9 **automatic stay.**  
 10 **Q. That's right.**  
 11 **A. So we considered all of those.**  
 12 **Q. So just to be clear, if I ask you about the specific**  
 13 **ins and outs of all those potential arguments,**  
 14 **likelihoods of success and so forth, you will not**  
 15 **answer those questions on the basis of the**  
 16 **attorney-client privilege, correct?**  
 17 **A. That is correct.**  
 18 **Q. Oh, I know. The City recently argued in court against**  
 19 **yours truly that the automatic stay bars the cash**  
 20 **trapping provisions of the collateral agreement. Are**  
 21 **you aware of that?**  
 22 **A. I believe I am, yes.**  
 23 **Q. Yeah. In fact, I think that your spokesman,**  
 24 **Mr. Nowling, may have made statements in the press**  
 25 **about the impact of the judge's rulings. Are you**

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1 **A. Yes.**  
 2 **Q. In fact the optional termination period, it could end**  
 3 **as soon as on September 16th; at the latest it goes to**  
 4 **June 30, 2014, right?**  
 5 **A. Correct.**  
 6 **MR. SHUMAKER: Objection, document speaks**  
 7 **for itself.**  
 8 **A. Yeah, the document --**  
 9 **BY MR. HACKNEY:**  
 10 **Q. Whatever it says --**  
 11 **A. Yeah.**  
 12 **Q. -- that's your understanding?**  
 13 **A. Yes.**  
 14 **Q. So that -- the forbearance agreement -- let's put it**  
 15 **this way, Mr. Orr. The forbearance agreement gets you**  
 16 **access to cash during the optional termination period.**  
 17 **A. Yes, I believe that's true.**  
 18 **Q. If the automatic stay applied, it might get access to**  
 19 **the casino revenue during the whole bankruptcy,**  
 20 **correct?**  
 21 **A. It might.**  
 22 **Q. Yeah. We're talking about different things that you**  
 23 **consider as you're analyzing your options, right?**  
 24 **A. Yeah, correct.**  
 25 **Q. And this is -- this is a potentially important one**

1 familiar with those statements?  
 2 **A. I am.**  
 3 **Q. Did the Swap counterparties give their consent to the**  
 4 **City to make those arguments in court?**  
 5 **A. I don't know.**  
 6 **Q. And -- so you don't know whether they did or they**  
 7 **didn't?**  
 8 **A. That is correct.**  
 9 **Q. You understand that as originally designed the Swaps**  
 10 **were designed to hedge against interest rate risk on**  
 11 **the floating COPs?**  
 12 **MR. SHUMAKER: Objection, calls for a legal**  
 13 **conclusion.**  
 14 **MR. JURGENS: Objection to form as well.**  
 15 **A. That is my understanding.**  
 16 **BY MR. HACKNEY:**  
 17 **Q. And I can unpack it if you want. I know we get into**  
 18 **the --**  
 19 **A. That's my understanding.**  
 20 **Q. Yeah, okay. Let's just do basics of interest rate**  
 21 **risk, which is if the interest rates go above the**  
 22 **hedge rate, then now the Swap counterparties have to**  
 23 **pay the difference to the service corporations so that**  
 24 **they can pay the difference to the floating rate COPs,**  
 25 **correct?**

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1 **MR. SHUMAKER:** Objection, form.  
 2 **A. That is my understanding.**  
 3 **BY MR. HACKNEY:**  
 4 **Q.** That's how the hedge works.  
 5 Now, interest rates do not favor the City  
 6 in the Swaps -- we asked that earlier.  
 7 **A. Right.**  
 8 **Q.** I will strike that.  
 9 But more basics of interest rate hedging,  
 10 so as the interest rates go up and start to approach  
 11 the hedge, the amount the City owes under the Swap via  
 12 service corporations goes down?  
 13 **A. That -- that is my understanding.**  
 14 **Q.** And as it crosses over the hedge line, the service  
 15 corporation could actually be in the money?  
 16 **MR. JURGENS:** Objection to form.  
 17 **A. Yeah, here again, we had the discussion about in the**  
 18 **money or not, but to the extent your point is saying**  
 19 **that they would benefit more from the hedge than the**  
 20 **counterparties would, that is my understanding.**  
 21 **BY MR. HACKNEY:**  
 22 **Q.** When the interest rates get above the hedge line?  
 23 **A. (Nods head).**  
 24 **Q.** That's right.  
 25 **Okay.** Now, when you were entering into the

1 **Q.** Okay. No disrespect to the fine lawyers at Jones Day.  
 2 I don't know if I can calculate future interest rates  
 3 as a lawyer.  
 4 It was in Miller Buckfire's province to do  
 5 it. They may have done it in conjunction with Jones  
 6 Day?  
 7 **A. Yes, yes.**  
 8 **Q.** Okay. And any review of forward curves or different  
 9 interest rate implications currently existing in the  
 10 market would have been done by Miller Buckfire?  
 11 **A. Yes.**  
 12 **Q.** And your recollection is that it was done and it was  
 13 something that you considered as part of the decision  
 14 entering into this agreement?  
 15 **A. I believe so.**  
 16 **Q.** You're aware, for example, that the Federal Reserve  
 17 has indicated intent to scale back its monthly bond  
 18 purchases?  
 19 **A. I heard that.**  
 20 **Q.** And --  
 21 **A. Quantitative reasoning --**  
 22 **Q.** Yeah.  
 23 **A. Yeah.**  
 24 **Q.** And you're aware that many people believe that that  
 25 may lead interest rates to rise; isn't that right?

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1 forbearance agreement on July 17th, what steps did you  
 2 take personally to evaluate future -- I'm sorry. I  
 3 misspoke, didn't I?  
 4 **A. Yeah.**  
 5 **Q.** When you entered into the forbearance agreement on  
 6 July 15th --  
 7 **A. Right.**  
 8 **Q.** -- what steps did you take prior to that time to  
 9 evaluate future interest rate moves?  
 10 **A. Any discussions in those -- that regard would have**  
 11 **been with our investment bankers and generally with**  
 12 **our attorneys. What I'm trying to think of is were**  
 13 **there any discussions that I had with Miller Buckfire**  
 14 **which would not have been confidential in that regard.**  
 15 **I don't think that there were. What I can say is that**  
 16 **we evaluated the potentiality of the -- of the**  
 17 **interest rate fluctuation as indexed to LIBOR going up**  
 18 **or down, but I think most of those, if not all of**  
 19 **them, were in communications with one or more of my**  
 20 **attorneys.**  
 21 **Q.** And when you say we evaluated the interest rate  
 22 fluctuations, that would have been tasked to Miller  
 23 Buckfire to do?  
 24 **A. Yes, Miller Buckfire in conjunction with folks from**  
 25 **Jones Day. Yeah, sure.**

1 **A. Yes.**  
 2 **Q.** Okay. Did you analyze the likelihood that the  
 3 interest rates would rise or was that also tasked to  
 4 Miller Buckfire?  
 5 **A. I didn't do it independently. That would have been**  
 6 **tasked to Miller Buckfire.**  
 7 **Q.** And if I asked what that analysis showed, I would have  
 8 to ask Mr. Buckfire that?  
 9 **A. Yes, you would.**  
 10 **Q.** Okay.  
 11 **A. Yes, you would.**  
 12 **Q.** Let me ask you about -- in the motion to assume the  
 13 forbearance agreement, the City states that it has  
 14 examined whether there are viable actions to challenge  
 15 the Swap contracts. Do you recall that?  
 16 **A. Yes.**  
 17 **Q.** Under what theory could the City challenge the  
 18 validity of the Swap contracts?  
 19 **A. Any theories that we discussed -- I'll give you two**  
 20 **answers. One, many of the theories, my understanding**  
 21 **is and somebody -- I haven't read all of the**  
 22 **objections, but I've read some of them. Some of the**  
 23 **objections in this case have discussed some of those**  
 24 **theories.**  
 25 **Two, any theories which we would have**

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1 examined, either independently or in the context of  
2 reviewing and handicapping the probability of success  
3 of some of the objections, would have been done with  
4 counsel.

5 Q. And so you'll refuse to describe both the theories and  
6 their likelihood of success because it would invade  
7 the attorney-client privilege; is that correct?

8 A. Yes. Unfortunately, yes.

9 Q. If I asked you what likelihood of success the City  
10 attributes to an action seeking to declare the Swaps  
11 invalid, you'll decline to answer that on the  
12 attorney-client privilege?

13 A. Yes.

14 Q. Can we agree that if the Swaps are not valid, it  
15 wouldn't make sense for you to enter into the  
16 forbearance agreement?

17 A. No, not necessarily. There may be other prudent  
18 reasons that the City might want to be bring closure  
19 and certainty is access to its cash flow irrespective  
20 of the probability that the Swaps are valid or not  
21 valid.

22 Q. In your proposal for creditors on June 14, 2013, you  
23 said that the City has identified certain issues  
24 related to the validity and/or enforceability of the  
25 COPs --

1 Q. Okay. And you'll assert the attorney-client privilege  
2 as a protection against describing the invalidity of  
3 the COPs analysis?

4 A. Yes, because I did no independent analysis.

5 Q. Has the City completed its investigation into this  
6 issue?

7 A. No. The City's investigation into a number of things  
8 are ongoing.

9 Q. Okay. And this is one of them?

10 A. This is one of them, yeah.

11 Q. Okay. So the City hasn't reached a conclusion on this  
12 subject because it hasn't concluded its investigation  
13 into the subject, correct?

14 A. It -- I think that's fair, yes.

15 Q. And has the City considered whether the service  
16 agreements between the service corporations and the  
17 City are lawful?

18 A. I don't recall if we looked into that.

19 Q. So that's one that you --

20 A. I just don't recall if that was one.

21 Q. You may have investigated, you may have not?

22 A. Correct. I don't recall that one.

23 Q. If you have investigated, do you know if the  
24 investigation has concluded or do you not know?

25 A. No. If we had investigated or are investigating it,

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1 A. Yes.

2 Q. -- that may warrant further investigation.

3 A. Yes.

4 Q. Do you remember that?

5 A. Yes.

6 Q. I'm saving us from having to go through that --

7 A. Yeah, yeah. No. I remember.

8 Q. What issues has the City identified?

9 MR. SHUMAKER: Again, I'm going to caution  
10 the witness --

11 A. Yeah.

12 MR. SHUMAKER: -- if this is going to  
13 reveal attorney-client communications to not answer.  
14 Subject to that, you can answer.

15 A. Here again, there would be no issues that -- and I  
16 hate to keep saying this. There'd be no issues that I  
17 independently would have identified because I'm trying  
18 very hard not to act as a lawyer. I would have only  
19 identified those issues and had discussions of them in  
20 consultations with my attorneys. So whether there are  
21 issues such as void ab initio, fraud, any of the other  
22 issues that typically go to contracts, I would only  
23 have had those discussions with counsel, so  
24 consequently I can't speak to this.

25 BY MR. HACKNEY:

1 my understanding it would not have been concluded.

2 Q. Okay. So much like with the COPs, generally the  
3 validity of the service contracts with the City is a  
4 subject of ongoing investigation that has not yet  
5 concluded.

6 A. It may be the subject of ongoing investigation which  
7 has not yet concluded.

8 Q. Okay. If I asked you how either of those two  
9 investigations, the one into the COPs validity or the  
10 one into the service contracts validity, impacted your  
11 decision to enter into the forbearance agreement, you  
12 will decline to answer because it would tend to reveal  
13 attorney-client communications?

14 A. For all the reasons we discussed today, the -- yes, I  
15 would have to.

16 Q. Mr. Orr, let me ask you about under section 803 of the  
17 service contracts --

18 A. Yeah.

19 Q. -- I'm going to save us both from having to go through  
20 them --

21 A. Yeah.

22 Q. -- so I'll represent to you what it relates to and see  
23 if you've heard of it.

24 A. Okay.

25 Q. Okay?

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1 Under section 803 of the service contracts  
2 payments by the City to the service corporations are  
3 classified according to a waterfall.  
4 A. Um-hm.  
5 Q. Have you heard of this waterfall?  
6 A. Yes.  
7 Q. Okay. Did you evaluate whether there were any claims  
8 that any parties to the structure might have against  
9 one another if the forbearance agreement leads to the  
10 payment of monies outside of the waterfall?  
11 A. I assume you're alluding to prioritization or  
12 subordination in claims along those regards, and the  
13 answer: I think there probably was, but, here again,  
14 I would -- I did not do it independently. It would  
15 have been done by my counsel.  
16 Q. Okay. So you can't tell me the fruits of the analysis  
17 or the City's position on the likelihood of success on  
18 the issue because it's protected by the  
19 attorney-client --  
20 A. That is --  
21 Q. -- privilege?  
22 A. -- correct.  
23 Q. If I ask you how it impacted your decision to enter  
24 into the forbearance agreement, you'd also not be able  
25 to answer that on the basis of the attorney-client

1 A. Okay.  
2 Q. Do you know generally what I mean when I say that?  
3 A. Yes. The original documents by which the City  
4 borrowed money, 1.4 billion, for the unfunded  
5 actuarial liability --  
6 COURT REPORTER: For the --  
7 A. For the unfunded actuarial liability involve -- the  
8 organic documents.  
9 BY MR. HACKNEY:  
10 Q. That is exactly correct. And, to name a few, there  
11 are the service contracts, the contract administration  
12 agreement, the trust agreement, and the master and --  
13 and amended Swap agreements, correct?  
14 A. Yes.  
15 Q. You've heard of all of those?  
16 A. Yes.  
17 Q. And there are multiple versions of them?  
18 A. There are multiple versions of them.  
19 Q. For example, there are two service contracts --  
20 A. That's right.  
21 Q. -- because there are two service corporations.  
22 A. That's right.  
23 Q. Now, your understanding is that some of these  
24 documents were amended in 2009 in connection with the  
25 addition of the collateral agreement to the package,

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1 privilege?  
2 A. That is correct. In addition, that's part of the  
3 deliberative process.  
4 Q. Have you analyzed whether or not COP holders might  
5 have claims against the Swap counterparties if the  
6 City exercises the optional termination right?  
7 A. There -- have we analyzed it? The answer is yes, I  
8 believe so.  
9 Q. Okay. What's the result of that analysis?  
10 A. Here again, any discussion would have been caught up  
11 in discussions I would have had with my counsel in  
12 that regard, so I decline to answer the question.  
13 Q. Okay. Have you analyzed whether those potential  
14 claims may have an impact on whether the Swap  
15 counterparties go forward with the optional  
16 termination amount -- optional termination?  
17 A. I don't recall if we did that specific analysis. I --  
18 I think that was probably caught up in the whole  
19 universe of analyses of potential claims, pros and  
20 cons analyses, but I don't recall that one  
21 specifically.  
22 Q. We've just been talking now about the COPs. We've  
23 talked about the Swaps a lot. I'm going to for a  
24 moment reference the 2006 COPs Swap transaction  
25 documents.

1 correct?  
2 A. Yes. I'm going to take your meaning -- the amendment  
3 to mean that's the -- yes, the net effect of what  
4 happened in 2009.  
5 Q. Okay. Did you know, for example, that the service  
6 contracts were also literally amended --  
7 A. Yes.  
8 Q. -- as part of that?  
9 A. Yes. We're talking generally about all the documents  
10 without specifically going into each one.  
11 Q. Although I did -- I did in that last one.  
12 A. Yeah, you did, and so I'm following your lead on what  
13 we're talking about.  
14 Q. Okay.  
15 A. Okay.  
16 Q. The Swaps were also themselves amended in addition to  
17 the collateral agreement being created?  
18 A. I believe so.  
19 Q. Now, you're aware that these contracts that form the  
20 2006 COPs Swap transaction documents were contracts  
21 that were entered into the same day back in 2006? I  
22 know you weren't there.  
23 A. Yeah, I wasn't there, and I have seen them. I just  
24 don't recall sitting here today if they're the same  
25 day. If you're representing to me that is a fact, I

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1 have no reason to believe otherwise.  
 2 Q. I believe the City ordinance describes this as all one  
 3 transaction.  
 4 A. Right.  
 5 Q. Do you have a basis to dispute it?  
 6 MR. SHUMAKER: Objection, calls for  
 7 speculation --  
 8 A. Yeah.  
 9 MR. SHUMAKER: -- foundation.  
 10 A. Yeah, I have no basis to dispute it. Yeah.  
 11 BY MR. HACKNEY:  
 12 Q. You also know -- I know that you haven't familiarized  
 13 yourself with the documents.  
 14 A. Right.  
 15 Q. We talked about that earlier.  
 16 A. Right.  
 17 Q. You took a look at them. You know that they all refer  
 18 to one other and relate to one another.  
 19 MR. SHUMAKER: Objection to the extent it  
 20 calls for a legal conclusion.  
 21 MR. JURGENS: Object to form.  
 22 A. Yeah, if -- without drawing any legal meaning to the  
 23 concept that they all refer to one another, I believe  
 24 that they do.  
 25 BY MR. HACKNEY:

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1 Q. Now, the forbearance agreement that you just signed on  
 2 July 15th, that also references the 2006 transaction  
 3 documents, correct?  
 4 A. I believe so.  
 5 Q. Okay. In fact, doesn't it borrow certain terms from  
 6 some of those documents?  
 7 A. Without -- yeah, without reviewing the 2005 and 2006  
 8 documents or spending time here today reading through  
 9 this agreement, I believe that's accurate.  
 10 Q. Okay. I will represent to you that I have reviewed it  
 11 and that it does --  
 12 A. Right.  
 13 Q. -- but I take your answer.  
 14 A. Right.  
 15 Q. The -- do you know that one of the things that the  
 16 City agreed to do under the forbearance agreement is  
 17 that during the optional termination period --  
 18 A. Right.  
 19 Q. -- the City won't try to seek to invalidate any of the  
 20 2006 transaction documents?  
 21 A. I believe that's true.  
 22 Q. Okay. That's one piece that's big enough that you're  
 23 familiar with?  
 24 A. Yeah, I believe that's true.  
 25 Q. So is it fair to say that the 2006 transaction

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1 documents, the collateral agreement from 2009, and the  
 2 forbearance agreement are all documents that relate to  
 3 the same subject matter?  
 4 A. Without drawing a legal conclusion, I believe in a  
 5 broad sense it's fair to say that they relate to the  
 6 same subject matter, meaning the Swaps.  
 7 Q. Does the forbearance agreement amend any of the  
 8 provisions in the 2006 COPs or Swap transaction  
 9 documents?  
 10 MR. SHUMAKER: Objection, document speaks  
 11 for itself.  
 12 A. Yeah. I want to be very careful here. In addition to  
 13 the document speaks for itself, I don't want to draw a  
 14 relationship between the COPs document, which is  
 15 separate, to the Swaps document.  
 16 When I said they relate broadly to the  
 17 subject, to the extent COPs were money borrowed to try  
 18 to fund a pension obligation, and the Swaps were in  
 19 place as a hedge against the interest rate  
 20 fluctuations in those documents, and the collateral  
 21 agreement 2009 was a document that was meant to  
 22 address defaults that had occurred in relation to the  
 23 Swaps document, and this document was meant to address  
 24 the Swaps, they relate to that same subject area, but  
 25 I don't want to have my testimony suggest that there's

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1 a legal relationship between the COPs and the Swaps  
 2 document as relates to this agreement, forbearance and  
 3 optional termination agreement.  
 4 BY MR. HACKNEY:  
 5 Q. So as you sit here today, is your answer that you  
 6 don't know if the forbearance agreement amends any of  
 7 the 2006 COPs Swap transaction documents? It may, it  
 8 may not, you don't know?  
 9 A. That is -- that is correct. I'm not going to draw a  
 10 legal conclusion.  
 11 Q. Yeah, and I'm not going to try to drive you to one.  
 12 A. Okay.  
 13 Q. I am asking questions as in your role as a layperson  
 14 who did execute the document.  
 15 A. Right.  
 16 Q. I understand the lawyers are going to do what they do,  
 17 okay, but there is as a aspect of this where it's --  
 18 your understanding as the guy who signs on it --  
 19 A. Right.  
 20 Q. -- can also be relevant?  
 21 A. That's right. My understanding is what this agreement  
 22 does -- it's a forbearance agreement, and to the  
 23 extent it has a provision in it that reverts back to  
 24 the status quo ante if -- if the deal's not done, I  
 25 don't want to draw any legal conclusion if there's an

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1 amendment that exists after that process.  
 2 Q. Okay.  
 3 A. That's why I'm being hesitant.  
 4 Q. So you just don't know one way or the other as you sit  
 5 here today the impact the forbearance agreement has on  
 6 the other agreements?  
 7 A. With regard to an amendment, that's correct.  
 8 Q. Okay. Is it your understanding that the 2006 COPs  
 9 Swap transaction documents retain their vitality as  
 10 legal agreements to the -- of the parties thereto?  
 11 A. It's my understanding that they have whatever vitality  
 12 they have according to their terms.  
 13 Q. Okay. So all the rights that all the parties to the  
 14 COPs Swap transaction documents had before the  
 15 forbearance agreement, they still have today?  
 16 A. No. Here again, you're -- I just want to be careful.  
 17 It seems that you're trying to conflate COPs with  
 18 Swaps, and I want to be careful.  
 19 Q. Well, I want to say all of them, but if you say no,  
 20 it's different on these, some rights have changed, but  
 21 on these everyone's rights are preserved, that's okay.  
 22 A. Yeah, I want to be careful as far as saying what their  
 23 rights are because I do believe those are legal  
 24 questions, and in fact some of them are being  
 25 litigated in the various piece of litigation that are

1 A. I'll leave that to the attorneys.  
 2 Q. At the time that you entered into the forbearance  
 3 agreement, were you aware that the Swap insurers had  
 4 the right to consent to waivers, modifications or  
 5 amendments of the Swap agreement and the collateral  
 6 agreement?  
 7 MR. JURGENS: Objection to form.  
 8 A. I was aware that some of the Swap insurers had  
 9 asserted they had those rights. I had drawn no  
 10 independent legal conclusion as to whether or not they  
 11 did.  
 12 BY MR. HACKNEY:  
 13 Q. Okay. So you didn't know whether they were right or  
 14 they were wrong --  
 15 A. Correct.  
 16 Q. -- at the time you executed the agreement?  
 17 A. I had had discussions with my attorneys about whether  
 18 they were right or they were wrong, but I had no  
 19 independent conclusions.  
 20 Q. And you won't disclose the subject of your counsel's  
 21 communications?  
 22 A. I cannot disclose that subject because that's an  
 23 attorney-client communication.  
 24 Q. Did you evaluate when you entered into the forbearance  
 25 agreement, whether the act of entering into it would

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1 going on.  
 2 Q. Hence this deposition?  
 3 A. Hence this deposition. So I want to be very careful  
 4 that I not give any testimony that would implicate a  
 5 legal conclusion with regard to those documents.  
 6 Q. And I'm not asking for a legal conclusion. I'm just  
 7 asking for your understanding as the signatory --  
 8 A. Right.  
 9 Q. -- as to whether the COPs Swap transaction documents,  
 10 whether all the parties preserved their rights under  
 11 those documents, notwithstanding the forbearance  
 12 agreement, or whether the forbearance agreement  
 13 changes the parties' rights under those documents.  
 14 A. And that's why I'm being careful because my  
 15 understanding of the forbearance agreement is that it  
 16 imposed upon the City, service corporations and the  
 17 counterparties certain obligations to forebear. I'm  
 18 not going to draw a legal conclusion as to whether or  
 19 not that amended any rights or changed any rights  
 20 under the original documents.  
 21 Q. It may have, it may not have?  
 22 A. It may. It may have not. I'll leave that to the  
 23 attorneys.  
 24 Q. It may constitute a waiver, it may not constitute a  
 25 waiver, you'll leave that to the attorneys?

1 multiply the amount of litigation that the City might  
 2 face?  
 3 A. I think it's fair to say that we considered whether it  
 4 might. Any time you're in a transaction I think you  
 5 consider whether it might suborn litigation, yes.  
 6 Q. And what were your conclusions on this subject?  
 7 A. Here again, any conclusions we would have had would  
 8 have been in this whole air of discussions with my  
 9 counsel. What I can say, without saying what my  
 10 conclusions specifically were of the probability that  
 11 it might create additional litigation, is I thought  
 12 that overall it was in the best interest of the City  
 13 to enter into agreement.  
 14 Q. But you won't disclose to me your communications with  
 15 your counsel about whether this might multiply the  
 16 amount of litigation?  
 17 A. That is correct. Multiply, increase, whatever.  
 18 Q. And have you -- did you evaluate whether performing  
 19 under the forbearance agreement, performing -- and by  
 20 that I mean exercising the option.  
 21 A. Right.  
 22 Q. Whether -- let me say it again.  
 23 Have you evaluated whether exercising the  
 24 option under the forbearance agreement might subject  
 25 the City to additional liability?

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1 A. Here again, all of these issues regarding potential of  
2 contingent claims, additional litigation, the  
3 advisability of entering into the agreement,  
4 considering that we were in litigation, and as I said  
5 before there may have been litigation threats made  
6 additionally, were taken into consideration in  
7 consultation with my counsel.  
8 Q. But you can't disclose those communications?  
9 A. They are attorney-client communications.  
10 Q. All right. Let me ask you some questions about the  
11 proposed order which I've marked.  
12 A. Okay.  
13 MR. HACKNEY: You know what? We've got a  
14 five-minute tape coming up and maybe since we're about  
15 to move to a new section, I'll propose a restroom  
16 break.  
17 THE WITNESS: Okay. That's fine.  
18 VIDEO TECHNICIAN: The time is 11:35 a.m.  
19 This marks the end of tape number 2. We are off the  
20 record.  
21 (Recess taken at 11:35 a.m.)  
22 (Back on the record at 11:51 a.m.)  
23 VIDEO TECHNICIAN: We are back on the  
24 record at 11:51 a.m. This marks the beginning of tape  
25 number 3.

1 in a form that's satisfactory --  
2 A. Yes.  
3 Q. -- to the Swap counterparties --  
4 A. I understand.  
5 Q. Yeah.  
6 A. I need to be clear. Obviously I've reviewed and read  
7 and signed the forbearance agreement. I reviewed the  
8 motion. I just don't recall whether or not I reviewed  
9 the order.  
10 Q. Okay.  
11 A. I may have because it was probably attached to the  
12 motion. I just don't have an independent recollection  
13 of it.  
14 Q. Let's try and make sure we understand the potential  
15 significance of the order --  
16 A. Sure.  
17 Q. -- and then we're going to go through it --  
18 A. Sure.  
19 Q. -- even though you haven't read it.  
20 Do you understand the Swap counterparties  
21 and the City and the service corporations -- there's a  
22 provision in the forbearance agreement that talks  
23 about the fact that you need to get an order  
24 entered --  
25 A. Sixty days.

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1 MARKED FOR IDENTIFICATION:  
2 DEPOSITION EXHIBIT 4  
3 11:51 a.m.  
4 BY MR. HACKNEY:  
5 Q. Let me hand you what I've marked as Orr Exhibit 4.  
6 MR. SHUMAKER: Are we going out of order?  
7 MR. HACKNEY: Yes. These were pre-marked  
8 and I must have dropped an exhibit here or there.  
9 BY MR. HACKNEY:  
10 Q. Do you have Orr Exhibit 4 in front of you, sir?  
11 A. Yes, I do.  
12 Q. So, Mr. Orr, I'll represent to you that this is the  
13 proposed order that your counsel submitted along with  
14 the motion.  
15 MR. HACKNEY: Oh, sorry.  
16 BY MR. HACKNEY:  
17 Q. Do you understand that?  
18 A. Yes. Yes, I do.  
19 Q. Did you review this order prior to its being submitted  
20 along with the motion?  
21 A. I don't think I did.  
22 Q. Okay. Let me tell you that this order is actually of  
23 some importance to the forbearance agreement.  
24 A. Um-hm.  
25 Q. And that's because if you don't get an order that is

1 Q. -- that's mutually agreeable.  
2 A. Yes.  
3 Q. And that was the 60-day time period.  
4 A. Yes.  
5 Q. And we can find the specific provision, but --  
6 A. Yes.  
7 Q. -- you know what I'm talking about.  
8 A. Yes, I do.  
9 Q. Okay. So the form of the order is important.  
10 A. Um-hm.  
11 Q. Is that a yes?  
12 A. Yes.  
13 Q. And it's important because if the order changes  
14 materially, it might arguably give the Swap  
15 counterparties the right to declare an end to the  
16 termination period.  
17 MR. SHUMAKER: Objection to the form, calls  
18 for a legal conclusion.  
19 A. Here again, without making a legal assessment, I  
20 understand your meaning that we -- we have an  
21 obligation in the City to make sure the order is in a  
22 form that is mutually agreeable to the parties.  
23 BY MR. HACKNEY:  
24 Q. And this is it, right?  
25 A. That is the proposed order.

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1 Q. And this one, you know, is mutually agreeable to the  
2 parties.  
3 A. I believe that it is, yes.  
4 Q. I mean, you may not have negotiated it --  
5 A. Correct.  
6 Q. -- personally, but it's your expectation that people  
7 acting on your behalf then went to make sure that the  
8 proposed order was mutually agreeable to the Swap  
9 counterparties?  
10 A. That is correct.  
11 Q. Okay. Now, if the Court -- you understand that in  
12 bankruptcy sometimes the Court enters an order that's  
13 different from the one that was proposed.  
14 A. Yes. I think the judge has done that on many  
15 occasions in this case.  
16 Q. Yes. And so you understand the judge is the one who  
17 ultimately decides what the order says.  
18 A. The judge wears the robe.  
19 Q. That's right. Now, the judge, it's possible he may  
20 materially change some of the provisions of this  
21 order. Do you understand that?  
22 A. Yes. It is possible that the judge may change the  
23 order.  
24 Q. And I'm not going to ask you to commit to a position  
25 as to whether you would lose your rights, but it at

1 A. Yes. Here again, it's speculative, in my -- but I  
2 don't anticipate that experience. In my experience  
3 most judges are -- my experience is that many judges  
4 are very careful not to undermine the underlying  
5 agreement by the order that's entered.  
6 BY MR. HACKNEY:  
7 Q. So we can agree, though, that this order is an  
8 important part of the forbearance agreement, correct?  
9 A. Yes. I think the order is relevant to the forbearance  
10 agreement.  
11 MR. JURGENS: Objection, form.  
12 BY MR. HACKNEY:  
13 Q. And it's important to it?  
14 MR. SHUMAKER: Objection to form.  
15 A. I think it's a -- yes.  
16 BY MR. HACKNEY:  
17 Q. Let me ask you about some of the specific provisions  
18 in the order.  
19 A. Okay.  
20 Q. Let me just say real quick, do you know who negotiated  
21 this order with the Swap counterparties?  
22 MR. JURGENS: Objection, form.  
23 A. I assume it was my counsel. I don't know who in  
24 particular.  
25 BY MR. HACKNEY:

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1 least raises the risk that if there's a material  
2 change to the proposed order, the Swap counterparties  
3 might be able to say that's not the order that we  
4 mutually negotiated in advance of the motion so in my  
5 view you haven't obtained the mutually negotiated  
6 order.  
7 MR. SHUMAKER: Objection, form, foundation.  
8 BY MR. HACKNEY:  
9 Q. That's a risk?  
10 MR. SHUMAKER: Sorry. Objection to form,  
11 foundation, calls for speculation.  
12 A. Yeah. It is somewhat speculative, and I'd have to say  
13 that risk has to be mitigated by the fact that I would  
14 hope and anticipate that any proposed revisions to the  
15 order would be discussed with the Court under the  
16 guise of the obligations that the parties have to  
17 reach a mutually agreeable order.  
18 BY MR. HACKNEY:  
19 Q. Okay. But if the Court enters an order that is not  
20 mutually agreeable to the City and the Swap  
21 counterparties, that could give the Swap  
22 counterparties the right to terminate the optional  
23 forbearance period?  
24 MR. SHUMAKER: Objection, calls for  
25 speculation.

1 Q. Did you -- but did -- did you approve the form of this  
2 order before it was submitted for the City?  
3 A. As I said, I looked at the motion and the order was  
4 probably attached to the motion. I just don't  
5 remember looking at the order specifically. What I  
6 remember is, after we reached the agreement in  
7 principle and signed the forbearance agreement, having  
8 discussions without speaking to them, my counsel,  
9 okay, was -- let's document the agreement and get the  
10 motion filed.  
11 Q. Do you know who -- do you know whether anyone  
12 approached the service corporations to get their views  
13 on the order?  
14 A. I do not.  
15 Q. You certainly didn't?  
16 A. No.  
17 Q. And let me just tie this up for a record because I was  
18 asking it colloquially, but it's under section 1.3(j)  
19 of the forbearance agreement. The City needs to  
20 obtain a final and non-appealable order on its motion  
21 before September 16th, 2013 or else the Swap  
22 counterparties have the right to terminate the  
23 forbearance agreement; isn't that correct?  
24 A. Yeah.  
25 MR. SHUMAKER: Objection to the summary.

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1 A. Yeah. The agreement speaks for itself and there are  
2 other provisions in there, but the net effect is that  
3 you have to do -- obtain the order within 60 days  
4 and --  
5 BY MR. HACKNEY:  
6 Q. Yeah.  
7 A. -- I believe that's -- if you represent that's the  
8 correct date, then I have no reason to disagree.  
9 Q. And there are actually two elements to this here. One  
10 of them is that, whatever the order says, it has to be  
11 final and unappealable by September 16, correct?  
12 MR. SHUMAKER: Objection, document speaks  
13 for itself.  
14 A. I'll have to rely on the documents speaking to itself  
15 because without going through the whole -- I do recall  
16 that there was an obligation that the order be a final  
17 order. I don't recall specifically the -- the  
18 unappealable aspect of it. I do -- I do see in J that  
19 there's a 60-day provision going forward.  
20 BY MR. HACKNEY:  
21 Q. And do you see it says final and unappealable in J?  
22 A. I'm sorry, I'm looking through it.  
23 Q. No, that's okay. You what, the court order  
24 definition?  
25 A. Yeah. It doesn't say it in J as defined in 2.1(d),

1 whether they will extend that 60-day deadline we were  
2 just discussing?  
3 A. I have not had any discussions. I am unaware as to  
4 whether or not any of my representatives have.  
5 Q. You haven't directed them to have any, correct?  
6 A. No, not directly.  
7 Q. It's correct that you have not directed them?  
8 A. It is correct -- it is correct that I have not  
9 directed them, but generally, just so we have an  
10 understanding here, once the forbearance agreement was  
11 reached, my counsel and representatives have all the  
12 authority necessary to do what's required to get the  
13 order entered.  
14 Q. Okay. Well, let me ask it this way, which is, there  
15 are a number of provisions that are in this order that  
16 I -- I guess I'm maybe having the sense that you're  
17 not intimately familiar with as you sit here today; is  
18 that correct?  
19 A. Yes, I know generally what the provisions of the order  
20 are. I know that the motion speaks to both the  
21 assumption and the 9019 agreement and their different  
22 principles, but the specific inner workings of the  
23 order, I will defer to my counsel on those.  
24 Q. Let me ask you about some of them then. Look on the  
25 page 3 at E which is entitled Consent to Use of Casino

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1 and that's what I was looking. Unfortunately I -- I  
2 remembered it was in 2. It's D. It's 2.1(d).  
3 Q. And you --  
4 A. It says obtain entry of a final and unappealable  
5 order, yeah.  
6 Q. Are you aware that that's actually not possible as we  
7 stand here today under the rules of the bankruptcy  
8 code?  
9 MR. SHUMAKER: Objection, calls for  
10 speculation and a legal conclusion.  
11 A. Yeah, here again, since I'm not acting as an attorney,  
12 I'm going to defer from asking (sic) that question. I  
13 do understand that there are time frames involved  
14 under the bankruptcy code and under the rules as to  
15 whether or not they can occur.  
16 BY MR. HACKNEY:  
17 Q. So you don't know whether or not it's -- it's  
18 potentially impossible for the City to comply with  
19 this --  
20 A. Yeah, I would --  
21 MR. SHUMAKER: Same objection.  
22 A. I would not opine as to whether or not it's possible.  
23 BY MR. HACKNEY:  
24 Q. Have you or your representatives had any  
25 communications with the Swap counterparties regarding

1 Revenues.  
2 A. Um-hm. Um-hm.  
3 Q. And it contains a finding that says, "Pursuant to  
4 section 1.2 of the forbearance agreement, UBS AG and  
5 MLCS consent to the City's use of the casino revenue  
6 as set forth in the forbearance agreement."  
7 Do you see that?  
8 A. Yes, I do.  
9 Q. And then it says, "The consent of the UBS AG and MLCS  
10 will allow the City immediate access to its casino  
11 revenue as set forth in forbearance agreement and no  
12 other or further consents are required."  
13 Do you see that?  
14 A. Yes, I do.  
15 Q. Okay. Is this an important part of the proposed  
16 order?  
17 MR. SHUMAKER: Objection to form.  
18 A. Well, first, the document speaks for itself. Two --  
19 BY MR. HACKNEY:  
20 Q. It doesn't speak for itself in terms of whether it's  
21 important.  
22 A. Well, let me respond. Two, to the extent this is an  
23 order into a motion, it -- as we had discussed earlier  
24 today, it's important that we have unfettered access  
25 to the casino revenue; and, three, I do think this is

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1 a central aspect of the forbearance agreement.

2 Q. Okay. If the Court refuses to grant the relief  
3 specified here, will the Swap counterparties have the  
4 right to terminate the forbearance agreement in your  
5 view?

6 MR. SHUMAKER: Objection, calls for a legal  
7 conclusion.

8 You can answer.

9 A. Yeah, they'll have whatever rights they have under the  
10 forbearance agreement which might include termination.

11 BY MR. HACKNEY:

12 Q. Take a look at paragraph G, arms' length agreement.  
13 The forbearance agreement was negotiated at arms'  
14 length and in good faith by all parties, and it goes  
15 on to say, "UBS AG and MLCS are not insiders of the  
16 City as that term is defined in bankruptcy code  
17 section 10131?"

18 A. Um-hm.

19 Q. And this is the important part I want you focus on,  
20 "The parties entry into and performance under the  
21 forbearance agreement does not violate any law,  
22 including the bankruptcy code, and does not give rise  
23 to any claim or remedy against the parties thereto  
24 except as may be expressly set forth in this order or  
25 in such agreement."

1 provision does.

2 Q. Is this an important part of the order --

3 MR. SHUMAKER: Objection.

4 BY MR. HACKNEY:

5 Q. -- from the City's perspective?

6 MR. SHUMAKER: Objection, form.

7 A. Yes, without giving rise to the nomenclature  
8 important. As I said before, it's important that we  
9 have certainty and -- regarding the use of the casino  
10 revenue, and this term certainly looks like it would  
11 provide that.

12 BY MR. HACKNEY:

13 Q. Okay. And not only does it provide you the certainty  
14 about the casino revenue, it provides you with the  
15 certainty that you will not be -- the City will not be  
16 subject to any liability as a result of performing  
17 under the forbearance agreement, correct?

18 A. Yes, I believe so.

19 Q. And it does the same thing for the Swap  
20 counterparties, correct?

21 A. Yes, I believe so.

22 Q. Take a look at paragraph 4 on the bottom of page 4.

23 A. Um-hm.

24 Q. It says, "The forbearance agreement is approved in its  
25 entirety. The City is authorized to perform its

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1 Do you see that?

2 A. Yes.

3 Q. Do you remember earlier we talked about whether if the  
4 City performed under the forbearance agreement it  
5 would be able to do so without the fear of liability  
6 to other parties?

7 A. Yes.

8 Q. And your understanding was it could do so, correct?

9 A. Yes.

10 Q. And that so could the Swap counterparties, correct?

11 A. Yes.

12 Q. And isn't this provision one part of the basis for  
13 your -- for that view?

14 A. Well, you know, as I said, this provision draws a  
15 legal conclusion and I have not independently or as an  
16 attorney done an analysis of what this provision will  
17 provide, but that's my understanding, yes.

18 Q. Are you just reading this provision for the first  
19 time?

20 A. No. I think I -- as I said, I think I saw the order  
21 attached to the motion. I just didn't recall it  
22 immediately or as terms by itself. I was more  
23 familiar with the motion because I read that in  
24 conjunction with my affidavit that was attached to the  
25 motion, but I think that's the effect of what this

1 obligations that arise from the forbearance agreement  
2 pursuant to Bankruptcy Rule 9019, and any actions  
3 taken heretofore in furtherance of these obligations  
4 are hereby ratified."

5 Do you see that?

6 A. Yes, I do.

7 Q. You understand that to be a provision by which the  
8 Court provides a judicial authorization to the City  
9 and the Swap counterparties to perform under the  
10 forbearance agreement, correct?

11 MR. SHUMAKER: Objection, calls for a legal  
12 conclusion.

13 MR. HACKNEY: I'm just asking for his  
14 assumption.

15 A. My understanding --

16 MR. SHUMAKER: Just to make that clear.

17 A. My understanding is that is the practical effect of  
18 this provision.

19 BY MR. HACKNEY:

20 Q. Okay. Is this an important part of this order?

21 MR. SHUMAKER: Objection to form.

22 A. I think approval of the forbearance agreement is an  
23 important part of this order, yes.

24 BY MR. HACKNEY:

25 Q. But also the judicial authorization to perform.

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1 A. Yes, I believe so.

2 Q. Let me -- let me cut through some of these provisions,  
3 which is, what the parties really want the Court to do  
4 here, both the City and Swap counterparties, is to  
5 tell them you are allowed to perform this forbearance  
6 agreement without fear of reprisal from any third  
7 party, correct?

8 MR. JURGENS: Objection to form.

9 MR. SHUMAKER: Objection to form.

10 A. Yeah, and I also think it calls for a legal  
11 conclusion, but let me see if I can answer the  
12 question. The motion sets forth what I believe are  
13 the conditions necessary for approval of the  
14 forbearance agreement. This order seeks to approve  
15 that motion, so to the extent it does that, yes, I  
16 believe it authorizes the parties to perform and gives  
17 them the authority to go forward to a motion according  
18 to its terms which incorporates by definition the  
19 forbearance agreement, so yeah.

20 BY MR. HACKNEY:

21 Q. And they can do so without fear of liability to third  
22 parties.

23 A. You know, that -- that impacts upon -- I believe that  
24 may impact upon the question is not atypical in some  
25 orders as far as -- as we discussed earlier today,

1 A. Yeah, that's -- you know, there are so many -- there  
2 are -- there's a possibility there may be conditions  
3 under which the City could agree, so I don't want to  
4 be misleading in saying that there are no  
5 circumstances when -- but generally speaking, this  
6 order, the motion and forbearance agreement, are the  
7 expectations of the parties.

8 Q. Are you aware of the possibility that if third party  
9 claims are preserved, that that could be a  
10 sufficiently material change in this order for the  
11 Swap counterparties to be able to terminate?

12 A. It might be.

13 Q. Have you had any conversations with them about that  
14 subject?

15 A. I have not personally had any conversations with them  
16 about that subject.

17 Q. Have you directed folks that report to you to do so,  
18 either advisors or personal --

19 A. As I've said earlier, I've given the authority to my  
20 counsel and team to have all discussions that are  
21 necessary to address any contingencies that could  
22 arise, and they may well have had those discussions.  
23 I'm just not aware of any with specificity.

24 Q. Okay. But you gave a general direction.

25 A. Right.

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1 releases, third party liability, exculpation, those  
2 are legal conclusions. My understanding is that the  
3 way the order is -- is worded that, yes, it allows the  
4 parties to go forward.

5 COURT REPORTER: To --

6 THE WITNESS: To go forward.

7 MR. HACKNEY: Without liability to third  
8 parties.

9 BY MR. HACKNEY:

10 Q. I think we're going over ground we've gone over  
11 before.

12 A. Yeah. I believe that's the intent of the order, yes.

13 Q. Okay. So one of the benefits of the order to the City  
14 and the Swap counterparties is that to the extent  
15 there are third party claims -- and I know you're not  
16 conceding that there are any --

17 A. Right.

18 Q. -- it clears them away.

19 A. I believe that's accurate, which is one of the -- yes.  
20 I believe that's accurate.

21 Q. And I take it the City is not willing to agree to an  
22 order which ensures the protection of third party  
23 claims?

24 MR. SHUMAKER: Calls for speculation,  
25 objection.

1 Q. You didn't give someone a specific direction to hey,  
2 go find out what the Swap counterparties think if  
3 third party rights are preserved, what are they going  
4 to do, do we have a problem? You never gave that  
5 specific direction.

6 A. No, I didn't, and let's -- you know, let's make sure  
7 we're clear on this. As I said, once we reached the  
8 agreement, you know, my direction was okay, let's get  
9 it done and let's document and do whatever's necessary  
10 to do that, so I did not give a specific direction in  
11 that regard.

12 Q. Let me ask you real quickly. One of the other  
13 benefits of the forbearance agreement to the City is  
14 that it resolves litigation that the City's currently  
15 in with Syncora, correct?

16 A. I would like to think so. To the extent it draws a  
17 legal conclusion, I'd have to defer to my counsel, but  
18 I like to think it does that, yes.

19 Q. So you think that the Court's order that we're looking  
20 at here will actually moot pending litigations  
21 involving the City and Syncora?

22 A. Perhaps not. For instance, and I haven't -- you know,  
23 I haven't drawn a legal conclusion on this, but there  
24 may be claims by the City against Syncora that survive  
25 this order. I just don't know.

1 Q. Okay. As the City's litigation against Syncora stands  
2 currently, will the Court's order moot out that  
3 litigation?  
4 **A. I don't know.**  
5 **MR. SHUMAKER:** Objection, calls for a legal  
6 conclusion.  
7 **A. Yeah, I was going to say I don't know. That -- that**  
8 **calls for a legal conclusion and I have not**  
9 **independently done that analysis.**  
10 **BY MR. HACKNEY:**  
11 Q. Okay. So it may, it may not, you don't know?  
12 **A. It may, it may not. I don't know.**  
13 **Q. The -- I want to talk about the source of proceeds for**  
14 **any potential termination payment down the road. This**  
15 **is a subject I discussed with Mr. Buckfire yesterday.**  
16 **A. Um-hm.**  
17 Q. The optional termination amount fluctuates over time  
18 and is ultimately pegged on the day that you exercise  
19 the option; isn't that correct?  
20 **A. Yes, I believe that's correct.**  
21 **MR. JURGENS:** Objection to form.  
22 **BY MR. HACKNEY:**  
23 **Q. So when we talk about these amounts, Mr. Orr, it's a**  
24 **little bit difficult because we don't -- I can't tell**  
25 **you you're going to have X amount of money to exercise**

1 **BY MR. HACKNEY:**  
2 **Q. Okay. Now, let's link up the potential sizeable**  
3 **termination payment that the City may have to marshal**  
4 **if it wants to exercise the option with the City's**  
5 **current financial capabilities.**  
6 **A. Yes.**  
7 **Q. Okay. Isn't it true that the City does not currently**  
8 **have enough cash on hand to be able to fund a**  
9 **termination payment that was in the range of 200**  
10 **million dollars?**  
11 **A. That is true.**  
12 Q. Okay. That's part of the problem that you're working  
13 on as emergency manager, right?  
14 **A. That is certainly true.**  
15 **Q. Do you know how much cash the City has today?**  
16 **A. On any given day, we fluctuate approximately in the**  
17 **neighborhood of I want to say 30 to 40 million**  
18 **dollars. Right now that number may be a little bit**  
19 **higher because we just went through one of our tax**  
20 **collection periods in August.**  
21 Q. I'm going to guess and ask you do you stay in almost  
22 daily contact with your -- with your cash flow  
23 forecast?  
24 **A. Almost daily, yeah.**  
25 Q. Yeah. That's probably an important aspect of running

1 it, but you understand that there is a distinct  
2 possibility that the amount of the optional  
3 termination payment will be a very sizable sum.  
4 **MR. JURGENS:** Objection to form.  
5 **A. I think that it's fair to say that although the**  
6 **interest rates may fluctuate, they are not going to**  
7 **fluctuate so greatly that it will reduce the**  
8 **probability that that will be a sizable sum. You're**  
9 **not going to go from zero points or two points to**  
10 **36 percent at the Fed discount window.**  
11 Q. Hopefully not or something's horrible happened.  
12 **A. Yeah, or we're all in trouble, yeah. So you may**  
13 **fluctuate, but the range of fluctuation is generally**  
14 **within a fairly finite bandwidth, we hope.**  
15 **Q. And I'm going to give you some notional amounts that**  
16 **are based on comments your counsel has made in court,**  
17 **just to try and get general agreement.**  
18 **A. Sure.**  
19 Q. But it's very possible that the amount of the  
20 termination payment could be between 180 and 220  
21 million dollars?  
22 **MR. JURGENS:** Objection to form.  
23 **A. I think that's fair. We certainly hope it's on the**  
24 **lower end or lower of that scale, but that depends**  
25 **what the rates are at any given day.**

1 the City.  
2 **A. It's an important aspect of the City.**  
3 **Q. Do you still project that you're going to run out of**  
4 **cash by the end of the year?**  
5 **A. If we don't have this agreement, there's a very real**  
6 **chance, yes, in a steady state, we will run out of**  
7 **cash.**  
8 Q. And by -- what do you mean by a steady state?  
9 **A. If we don't do anything such as secure this casino**  
10 **revenue, if we don't go to the capital markets and**  
11 **borrow additional funds, which appears unlikely which**  
12 **the City has done every other year since 2008 to make**  
13 **up the difference, yes, the projections show that by**  
14 **December of this year, we will run out of cash.**  
15 Q. Are those the pre-bankruptcy projections?  
16 **A. Yes. I believe so.**  
17 Q. Those are the projections that we'll get into in a  
18 moment that -- but that assumes that the City's paying  
19 its legacy expenditures on a current basis, right?  
20 **A. Yes. As we have -- as we have represented, we intend**  
21 **to continue doing that throughout the year.**  
22 Q. The legacy expenditures?  
23 **A. Well, certainly with regard to healthcare and other**  
24 **employees, if we get this agreement, that may change**  
25 **our risk for the termination payment.**

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1 Q. Your view of those legacy expenditures in the  
2 bankruptcy is that they are unsecured claims, correct?  
3 A. Yes. Many of them are, yes. There are some  
4 expenditures that are secured with regard to the water  
5 department and parking and some miscellaneous, but the  
6 roughly 11 and a half, 12 billion dollars that we put  
7 out there we view as unsecured.  
8 Q. So let's go back to sourcing this termination payment.  
9 A. Yes.  
10 Q. It was my understanding of his testimony that  
11 Mr. Buckfire who, by the way, is the individual tasked  
12 with obtaining the City's post petition financing,  
13 correct?  
14 A. Yes.  
15 Q. And is presumably the individual that's most  
16 knowledgeable about that effort?  
17 A. Yes.  
18 Q. It was -- I'll represent to you that his testimony was  
19 that the proceeds for the optional termination payment  
20 would likely come from the post -- the proceeds of the  
21 post petition financing?  
22 A. Yes.  
23 MR. JURGENS: Objection to form.  
24 BY MR. HACKNEY:  
25 Q. Is that also your understanding?

1 Q. Okay. So I think there -- if I'm not mistaken, your  
2 father was an amen minister.  
3 A. Great grandfather, grandfather and father.  
4 Q. So maybe --  
5 A. Yeah, took me back to -- over in the corner with the  
6 deacons, yeah, took me back.  
7 Q. Okay. I won't compare myself to your father,  
8 grandfather and great grandfather, but I can aspire.  
9 A. Yeah.  
10 Q. So I do want to talk about -- this is important.  
11 Okay. This is -- isn't it true that one aspect of the  
12 DIP -- I'm not going to get into the others -- is that  
13 the casino revenues will be pledged or anticipated to  
14 be pledged as collateral for the post petition  
15 financing?  
16 A. Let me say this. That is certainly under  
17 consideration.  
18 Q. Okay. Now, isn't it also true, though, that the  
19 casino revenues have not currently been freed up on a  
20 permanent basis because the City has not currently  
21 exercised the option, correct?  
22 A. The certainty that we hope to get out of the  
23 forbearance agreement has not been approved yet,  
24 correct.  
25 Q. Well, even if it is approved by the Court, you still

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1 A. Yes.  
2 Q. Okay. Now, isn't it also true that the City hopes to  
3 pledge the casino revenues as part of the collateral  
4 package for the post petition financing?  
5 MR. SHUMAKER: I'm going to object here.  
6 We're getting into an area where it is incredibly  
7 commercially sensitive as to what sort of post  
8 petition financing that the City is seeking.  
9 MR. HACKNEY: Let me not be rude. I will  
10 tell you I'm just going to ask him questions that  
11 Buckfire asked yesterday -- answered. So I'm not  
12 going to try and play the whole thing, but there were  
13 absolutely areas where Buckfire answered. I think  
14 there were a lot of other people in the room that were  
15 there. I think any of your colleagues --  
16 MR. SHUMAKER: Okay, that's fine.  
17 MR. HACKNEY: Any of your colleagues.  
18 MR. SHUMAKER: I just want to caution you.  
19 MR. HACKNEY: I understand. I understand  
20 the sensitivity. There were absolutely areas, though,  
21 that Buckfire talked about. This was one of them. I  
22 mean can I get an Amen or --  
23 (Consensus Amen.)  
24 A. Okay.  
25 BY MR. HACKNEY:

1 won't have exercised the option.  
2 A. That is true with regard to the optional termination  
3 payment.  
4 Q. Right.  
5 A. Yes.  
6 Q. And you need to exercise the option to terminate the  
7 hedge, right?  
8 A. Yes.  
9 Q. You need to terminate the hedge to terminate the  
10 collateral agreement.  
11 A. I think that's --  
12 MR. SHUMAKER: Object to form, to the  
13 extent calls for a legal conclusion.  
14 A. Yeah, without getting into legal conclusions --  
15 COURT REPORTER: I'm sorry. This is --  
16 BY MR. HACKNEY:  
17 Q. You think it's a fair characterization that you need  
18 to get the hedge terminated to get the collateral  
19 agreement terminated?  
20 A. Yes.  
21 Q. And the good part for the City, if those things  
22 happen, is that now you have unchanneled access to the  
23 casino revenues going into the future?  
24 A. Yes, as we've said today, that certainty is one of the  
25 motivations to enter into the agreement.

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1 Q. But do you also understand that you can't currently  
2 pledge the casino revenues to a post petition lender  
3 in a -- prior to having exercised the option under the  
4 forbearance agreement?

5 A. Well, let's be careful without drawing legal  
6 conclusions. You can always enter into agreements  
7 that have contingencies attached to them and the  
8 parties will wait for those contingencies to occur.  
9 That certainly has happened with a number of different  
10 negotiations, not just in this case, but happens all  
11 the time.

12 Q. That's fair that you absolutely -- you make a pledge  
13 that's contingent on something else. But isn't it  
14 true that, as a general matter, post petition lenders  
15 typically like to make sure that they have clean  
16 collateral before they make a loan that's secured by  
17 that collateral?

18 MR. SHUMAKER: Objection, calls for  
19 speculation.

20 A. I think that's generally a fair characterization;  
21 however, there have been cases that I've been involved  
22 with outside of this one where post petition lenders  
23 have been willing to make pledges or commitments  
24 subject to certain contingencies.

25 BY MR. HACKNEY:

1 mislead you. It is my assumption that, while they're  
2 commercially sensitive, that's not going to be  
3 forthcoming.

4 Q. Oh, really?

5 A. Yes.

6 Q. So just to tie it up, you tried to get a -- whether  
7 it's credit enhancement or liquidity from the State  
8 and the Feds, and your expectation is that you won't  
9 be able to?

10 A. My understanding at the State level is that there's  
11 certain prohibitions of the State law on the ability  
12 of the State to lend to the City, and at the Federal  
13 level my understanding is that it's not going to be  
14 forthcoming, direct aid.

15 Q. Interesting. And what about credit enhancement by the  
16 State?

17 A. Here again, it's highly commercially insensitive --  
18 sensitive. I don't want to say anything that  
19 forecloses it, but we -- let me answer it this way.  
20 We are operating on the assumption that that will not  
21 come -- be forthcoming.

22 Q. The casino revenues are about 170 million dollars a  
23 year; isn't that correct?

24 A. Yeah, 170, 180 somewhere in there.

25 Q. Yeah. In fact, that -- it's interesting because the

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1 Q. Isn't it your expectation today, though -- is it -- is  
2 it your expectation today that any post petition  
3 lender will want clear -- a clear lien on the casino  
4 revenues before it's willing to lend? Is that your  
5 current expectation?

6 A. Well, my current expectation is it might well want  
7 clear lien before it's willing to fund. I would think  
8 in many of the bankruptcy cases that I've been  
9 involved in, post petition lenders, for instance, are  
10 willing to make commitments subject to the Court  
11 approving their super priority liens, and then once  
12 that approval is granted, they fund the loan, so  
13 that's fairly common.

14 Q. I'm going to confirm for the record that conversations  
15 with the State of Michigan about providing DIP  
16 financing or with the federal government about  
17 providing DIP financing are still questions that you  
18 will refuse to answer on the grounds of commercial  
19 sensitivity?

20 MR. SHUMAKER: I think you can ask Mr. Orr  
21 those questions. I don't want to -- I don't want to  
22 categorically exclude you from doing that.

23 BY MR. HACKNEY:

24 Q. Are they commercially sensitive?

25 A. They are commercially sensitive, but I don't want to

1 DIP proceeds you're seeking are up to 350; is that  
2 correct?

3 A. Here again, those are commercially sensitive, but I  
4 think that's fair. Yes, I think that's fair.

5 Q. Okay. And that's the equivalent of two years' worth  
6 of casino revenues, correct?

7 A. Yes.

8 Q. Okay. And that's something that you think you may be  
9 able to get without having to pledge a clear lien on  
10 the casino revenues, right?

11 A. No. What I'm trying to say is you can certainly enter  
12 into commitments. I'm drawing commitments different  
13 from funding. You can certainly have a lender which  
14 is quite common in bankruptcy cases to make a  
15 commitment subject to approval of its security  
16 interest or priorities to actually fund.

17 Q. Okay.

18 A. So that can occur.

19 Q. So the fact that that can occur means that there can  
20 be uncertainty in connection with the casino revenues  
21 and it won't hamstring your DIP process, correct?

22 A. Yeah, it's not so much -- well, to a degree what  
23 you're saying is correct. It's not so much  
24 uncertainty with casino revenues because that's math.  
25 It may be some uncertainty with regard to the ability

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1 of the City to pledge those revenues to pay off any  
2 post petition lending, and, here again, a lender might  
3 well be willing to enter into an agreement subject to  
4 having that insecurity removed to fund that --  
5 Q. The fact of the matter is the DIP process is just  
6 getting off the ground, correct?  
7 A. I think that's fair to say.  
8 Q. I think it's literally in the last couple days, right?  
9 A. I think that's fair.  
10 Q. So you don't know as you sit here today, and you  
11 probably wouldn't tell me if you did --  
12 A. Right.  
13 Q. -- what the current appetite of the lenders is for  
14 uncertainty around the casino revenues, correct?  
15 A. That -- that I think is part of the process. Yeah.  
16 Q. Now, have you attempted to borrow money -- has the  
17 City attempted to borrow money and secure those  
18 borrowings with a lien on something other than the  
19 casino revenues?  
20 A. No.  
21 Q. Is the -- is the City considering pledging art as  
22 collateral?  
23 MR. SHUMAKER: Again, I'm going to get into  
24 now the -- this is a very commercially sensitive  
25 subject.

1 A. Yeah.  
2 MR. SHUMAKER: I'm going to say that's --  
3 we're drawing a line. We're getting into specifics,  
4 and I'm going to instruct him not to answer.  
5 MR. HACKNEY: I -- okay. That's just all I  
6 need to know for the record.  
7 BY MR. HACKNEY:  
8 Q. Okay. Now, I want to talk about revenue streams other  
9 than casino revenues.  
10 A. Right.  
11 Q. The City does have other revenue streams; isn't that  
12 correct?  
13 A. Yes.  
14 Q. In fact, on an annual basis, the City's revenues are  
15 in the neighborhood of a billion to a billion 1,  
16 correct?  
17 A. Yes, I think that's fair.  
18 Q. And on an annual basis, the casino revenues are in the  
19 range of 170 to 180 million?  
20 A. Yes.  
21 Q. Roughly a little less than 20 percent of the City's  
22 annual revenues.  
23 A. 17 and a half, 18 percent.  
24 Q. Now, there's somebody who studied. Okay.  
25 So have you engaged the possibility of

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1 MR. HACKNEY: I'm just asking the  
2 questions. You guys got to decide --  
3 MR. SHUMAKER: I'm just stating my  
4 objection, and the fact of the matter is, as was  
5 stated yesterday with -- with Mr. Buckfire, is that  
6 when we get into the -- as you said, the RFP, the DIP  
7 RFP process is just started. We're not going to go  
8 into strategy or what the terms are or what the  
9 specifics are, because we do not believe that this is  
10 something that would be down to the City's benefit.  
11 If it's negotiated, gets public, and bidders' --  
12 MR. HACKNEY: Sure.  
13 MR. SHUMAKER: -- identities are revealed  
14 and all these things --  
15 MR. HACKNEY: I don't mean to be rude, and  
16 I totally respect the speech. I'm just interested in  
17 time, and for me the upshot is are you going to let  
18 him answer or not?  
19 MR. SHUMAKER: Well, if will you repeat the  
20 question, I'll tell you.  
21 MR. HACKNEY: I can't remember the question  
22 anymore.  
23 A. Have you considered --  
24 MR. HACKNEY: Are you going to pledge the  
25 art --

1 pledging other revenue streams as security for the  
2 DIP?  
3 A. This is a commercially sensitive area. In addition,  
4 there are potentially legal issues that must be  
5 resolved. Suffice it to say we have examined a number  
6 of different possibilities, looking at what options we  
7 might have given the City's various ordinary revenue  
8 streams.  
9 Q. And are there other revenue streams that could be  
10 pledged? I'm not going to ask you whether you are  
11 going to pledge them, whether you will, whether you  
12 plan to, but are there other revenue streams that  
13 could be pledged?  
14 A. There might be. There might be, but there's -- here  
15 again, there's certain legal issues regarding any  
16 revenue streams that have to be resolved.  
17 Q. Let me ask you about the -- the use of the casino  
18 revenues if you're able to obtain them.  
19 A. Right.  
20 Q. So just in terms of level setting --  
21 A. Right.  
22 Q. -- the casino revenues are approximately 15 million a  
23 month.  
24 A. Yes, I think that's fair.  
25 Q. Net of the Swap payment which is still made on a

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1 monthly basis under the forbearance agreement --  
 2 A. Yes.  
 3 Q. -- you net about 11 million?  
 4 A. I think that's correct.  
 5 Q. Okay. Your claim is that these revenues are necessary  
 6 to the operation of the City. I think we discussed  
 7 that earlier.  
 8 A. Yes.  
 9 Q. And in fact it's your expectation that you will use  
 10 these revenues to fund the reinvestment program that  
 11 you have planned with respect to the 1.25 billion  
 12 dollars of reinvestment in the City over the next ten  
 13 years?  
 14 A. Yes, that's correct. An average of 125 million a year  
 15 which a big component of it is this revenue.  
 16 Q. Okay. So fair statement, you're going to take the  
 17 casino revenues and you're going to plow them into the  
 18 City, correct?  
 19 A. More -- I mean, money goes into a bathtub, but yes.  
 20 The casino -- we don't have the casino revenue. We  
 21 have no other source to make reinvestment in the City.  
 22 Q. And that's what you want to do?  
 23 A. Yes.  
 24 Q. And so as a creditor, I'm going to make the obvious  
 25 point that you don't plan to take the casino revenues

1 A. Yes.  
 2 Q. -- effectively a pot of 2 billion dollars of bonds.  
 3 A. Correct.  
 4 Q. And I want to distinguish between two concepts and  
 5 make sure that we're on the same page because I think  
 6 that we are.  
 7 A. Right.  
 8 Q. The first point is that you do agree that you're not  
 9 going to take the casino revenues and put it on top of  
 10 the 2 billion pot to make a larger recovery for  
 11 creditors.  
 12 A. Yes, that's fair.  
 13 Q. But you are saying that there could be some value to  
 14 the creditors of a revitalized Detroit because that  
 15 Detroit will be more able to perform under the  
 16 2 billion dollars in bonds that you're going to give  
 17 them as part of your proposal?  
 18 A. That's correct.  
 19 Q. Okay. Did I summarize accurately the distinction you  
 20 were trying to draw there?  
 21 A. Yes. Yes. There's a broader concept about the need  
 22 to revitalize the City and grow beyond just the  
 23 interest of the creditors. It's also for the citizens  
 24 and residents and future of the City.  
 25 Q. Oh, absolutely. I understand that.

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1 and give them to the unsecured creditors, correct?  
 2 A. I think that's generally a fair characterization.  
 3 Q. So isn't it fair that other than perhaps certainly  
 4 benefitting the people of Detroit if you reinvested in  
 5 the City, the creditors themselves will not see their  
 6 recoveries enhanced by the fact that the City has  
 7 gained access to these casino revenues, correct?  
 8 MR. SHUMAKER: Objection, calls for  
 9 speculation.  
 10 A. Yeah, I'm going to be careful here because one of the  
 11 things we've offered in our proposal, June 14th  
 12 proposal, is a 2 billion dollar note that has some  
 13 capacity to fluctuate. Generally speaking, your  
 14 statement is true, but there's another concept that  
 15 without this reinvestment there's a very real chance  
 16 that the City will have no chance to stabilize and  
 17 grow and the creditors will see no opportunity for any  
 18 benefit because the City would have an inability of --  
 19 continue to decline, quality of life will continue to  
 20 decline, revenue from other streams will continue to  
 21 decline, and the City's ability to satisfy its  
 22 obligations to the creditors will continue to decline.  
 23 Q. Now, I understand that distinction, and we're talking  
 24 now about the proposal you've made to creditors that  
 25 you would give all of the unsecureds --

1 A. But, yes, that's generally -- no direct benefit from  
 2 the casino revenue.  
 3 Q. Consistent with what we've just discussed then, you  
 4 haven't undertaken an analysis to show how much  
 5 creditor -- unsecured creditor recoveries will be  
 6 enhanced if the forbearance agreement is approved,  
 7 because you intend to use the money to reinvest in the  
 8 City.  
 9 A. No. I'm not sure that's true. I mean, that's why I  
 10 was saying before, part of it is enhancing the  
 11 stability of the City and its ability to meet or  
 12 actually to provide for that 2 billion dollar note.  
 13 It depends on large part on the ability to stabilize  
 14 the City.  
 15 Q. I understand that as a general concept, but I meant  
 16 have you undertaken actually any actual analysis of  
 17 the potential Delta 2 creditor recovery?  
 18 A. Oh, from the 120 -- from the casino revenue?  
 19 Q. Right.  
 20 A. Yes, I believe we have.  
 21 Q. And what does it show?  
 22 A. Here again, that's -- it's sensitive and, in addition,  
 23 I believe those discussions were caught up in  
 24 discussions I had with counsel, so I'm going to have  
 25 to decline.

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1 Q. Those are privileged communications?  
 2 A. I believe so.  
 3 Q. So the analysis of how my client Syncora, as an  
 4 unsecured creditor, would do if the assumption motion  
 5 is denied versus how it will do if its granted, that's  
 6 something that you cannot speak to?  
 7 A. Right, because it goes into the analysis, as we said  
 8 earlier today, what would happen if it were denied,  
 9 what the options would be to the City, what litigation  
 10 risk would happen, what would be caught up in the  
 11 existing litigation, all those issues.  
 12 Q. Let me hand you Orr Exhibit Number 3.  
 13 **MARKED FOR IDENTIFICATION:**  
 14 **DEPOSITION EXHIBIT 3**  
 15 12:30 p.m.  
 16 **BY MR. HACKNEY:**  
 17 Q. It's even in color. One large view for you. I don't  
 18 mean that di --  
 19 A. Okay.  
 20 Q. Sorry.  
 21 A. I know you didn't. Okay.  
 22 Q. Yeah, okay. Cringeworthy, awkward. I apologize.  
 23 **THE WITNESS:** Can we go off the record for  
 24 a second?  
 25 **MR. HACKNEY:** Yeah.

1 June 14, 2013 meeting with creditors, correct?  
 2 A. Yes, I and my team put this together.  
 3 Q. And the best of your knowledge, this is a --  
 4 A. True and correct copy.  
 5 Q. -- true and correct copy?  
 6 A. Yes. I have no reason to believe this is not a true  
 7 and correct copy, in color.  
 8 Q. Great. Please don't --  
 9 A. Okay. This is --  
 10 Q. And obviously -- we haven't talked about this, but  
 11 Ernst & Young was retained to -- by the City to  
 12 undertake efforts to understand the City's cash flow  
 13 forecast, among other things, correct?  
 14 A. Yes, in addition -- yes.  
 15 Q. And I know that you're involved in all aspects of the  
 16 City's operation as emergency manager, but isn't it  
 17 true that Ernst & Young is the entity responsible for  
 18 preparing the City's cash flow forecasts?  
 19 A. Yes. I am not an account; they are. Yes.  
 20 Q. Okay. So while I'm certain that you have reviewed  
 21 their work product --  
 22 A. Yes.  
 23 Q. -- when it comes to actually compiling the forecast  
 24 itself, if I wanted to ask about how was this number  
 25 arrived at or this projection, I would have to ask

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1 **VIDEO TECHNICIAN:** The time is 12:30 p.m.  
 2 (Discussion off the record at 12:30 p.m.)  
 3 (Back on the record at 12:31 p.m.)  
 4 **VIDEO TECHNICIAN:** We are back on the  
 5 record the time is 12:32 p.m.  
 6 **BY MR. HACKNEY:**  
 7 Q. Mr. Orr, I am going to play it by the book --  
 8 A. Okay.  
 9 Q. -- from here on out, just to be safe.  
 10 A. Sure.  
 11 Q. And to the extent any of that was on the record, I do  
 12 want to offer a fulsome apology. That was an  
 13 inadvertent reference.  
 14 A. No apology necessary. To the extent anybody thinks  
 15 there was an apology necessary, it's not.  
 16 Q. Okay. Well, I appreciate that. Very gracious of you.  
 17 So in the motion to assume the forbearance  
 18 agreement, the City makes the claim that the City is  
 19 currently in a liquidity crisis; isn't that correct?  
 20 A. Yes.  
 21 Q. And that's something that you obviously agree with,  
 22 right?  
 23 A. Yes.  
 24 Q. Now, you prepared this proposal for creditors that  
 25 I've marked as Orr Exhibit 3 in anticipation of your

1 Ernst & Young.  
 2 A. You would -- yes, they'd be the best evidence of how  
 3 that was done.  
 4 Q. Okay. You might have knowledge about one number here  
 5 one number there because someone specifically  
 6 discussed it with you, but you don't have  
 7 comprehensive knowledge of how all the numbers in the  
 8 cash flow forecast were arrived at.  
 9 A. No. Usually the process is the financial advisor and  
 10 the -- Ernst & Young, for instance, would do the deep  
 11 dive and then present me with a report and analyses,  
 12 but they would have the in-depth knowledge.  
 13 Q. Fair enough. Fair enough.  
 14 You see their work product and you go over  
 15 with it with them. You're not the one that compiles  
 16 their work product.  
 17 A. That is correct.  
 18 Q. Obviously, in compiling this report, you, Ernst &  
 19 Young, your other advisors endeavored to be as  
 20 accurate as you could in assembling the information  
 21 contained in this report?  
 22 A. Yes.  
 23 Q. And that also would apply to forecasts that you were  
 24 making. You tried to be as accurate as possible about  
 25 making forecasts.

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1 A. Yes.  
2 Q. So let me draw your attention, if I could, to page 38  
3 of this report.  
4 A. Yes.  
5 Q. Now, this is -- this is titled A Look At the Future in  
6 the Absence of Restructuring Initiatives. Do you see  
7 that?  
8 A. Yes.  
9 Q. Okay. So what this table is doing is it's saying here  
10 is where the City of Detroit is headed without any  
11 increases in expenditures necessary to restore City  
12 services to adequate levels; without additional  
13 investments by the City and services assets or  
14 infrastructure; and, last, without any changes to  
15 legacy liabilities, correct?  
16 A. Yes, that's correct.  
17 Q. Now, we're going to talk about each of these three  
18 things in a moment, but the fact of the matter is each  
19 of those three things have changed during the  
20 bankruptcy process in terms of what legacy liabilities  
21 are getting paid or what reinvestments are being made,  
22 correct?  
23 A. To some degree they have and to some degree they  
24 haven't. We are still in a steady state with, for  
25 instance, salary, overtime, fringe, health benefits,

1 to June 30, right?  
2 A. Yeah, July 1 to June 30.  
3 Q. Right. Yeah. Okay.  
4 And the years that are listed here, it's  
5 your understanding these are the fiscal years,  
6 correct?  
7 A. 2008 to 2012 are fiscal year actuals. 2013 were  
8 preliminary forecasts, at this time forward.  
9 Q. That's right. This was back in June, so you had a  
10 little -- there was a stub period on June 2013?  
11 A. Yes.  
12 Q. When I talked to Mr. Buckfire yesterday, he indicated  
13 that it was his understanding that these years are  
14 July 1, 2013 through June 30, 2014 --  
15 A. That's correct.  
16 Q. -- 2014 here?  
17 A. That is correct.  
18 Q. Now, the forecast that the City indicates when it  
19 comes to total revenues for the fiscal year that we're  
20 currently in is about 1,082,800,000 in total revenue,  
21 correct?  
22 A. That is correct. That's down about 30-some-odd  
23 million dollars from the prior year.  
24 Q. Right. And if you look at the operating expenditures,  
25 that shows that you anticipate 685.7 million in

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1 operating expenses, with regard to secure debt  
2 service, pension contributions which remain  
3 underfunded, health benefits are still in a steady  
4 state. We are hopefully in a steady state on a  
5 revenue side as well.  
6 Q. I was just making --  
7 A. But, yes.  
8 Q. I was making a simpler point, which is, for example --  
9 we'll go into this, but like you're not paying the  
10 service payments related to the COPs during the  
11 bankruptcy?  
12 A. I believe that's correct.  
13 Q. Okay. And I think you're deferring pension  
14 contributions.  
15 A. A portion of the pension contributions. For instance,  
16 this year I think we had an obligation of  
17 approximately 131 million dollars. I think we paid 31  
18 million of it.  
19 Q. Okay. So a portion.  
20 A. But that is the steady state. The City regularly  
21 defers pension contributions.  
22 Q. True, true. We'll get into this in a moment here,  
23 but --  
24 A. Right.  
25 Q. -- now, the fiscal year of the City runs from June 30

1 operating expenditures during that -- this fiscal year  
2 that we're currently in, correct?  
3 A. That is correct.  
4 Q. Now, if you just viewed these things in isolation, you  
5 are representing here a net operating surplus of just  
6 under \$400,000,000, correct?  
7 A. That's roughly, correct, yes.  
8 Q. Now, the -- and the operating expenditures are the  
9 amount of money that you forecast needing to operate  
10 the City as you found it with its current level of  
11 services when you were appointed, correct?  
12 A. That is correct.  
13 Q. Okay. So that's the point of the caveat at the top,  
14 which is you have the aim of improving services in the  
15 City, but when you compiled this expenditures  
16 analysis, this was based on here is how we currently  
17 do things in the City of Detroit, providing the level  
18 of services we currently provide, and here is how much  
19 it costs?  
20 A. That is correct.  
21 Q. Now, isn't it true that -- we've talked about the fact  
22 that while the casino revenues fluctuate between 170  
23 and 180 million, even if you took them out of this  
24 forecast, you would still have a net operating surplus  
25 of \$227,000,000, correct?

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1 A. Well --  
2 Q. Put aside --  
3 A. Yeah, put aside --  
4 Q. I understand.  
5 A. -- debt service and pension contributions, healthcare,  
6 but just looking at operating expenses, that would be  
7 correct.  
8 Q. And -- that's right. I'm emphatically doing that.  
9 I'm referring to --  
10 A. Right.  
11 Q. -- this line. Okay?  
12 A. Right.  
13 MR. SHUMAKER: Which line, Steve?  
14 MR. HACKNEY: The line that says net  
15 operating surplus.  
16 A. It's in bold. It's the 1, 2, 3, 4th line down.  
17 BY MR. HACKNEY:  
18 Q. And, I mean, can we agree it wasn't an accident that  
19 whoever compiled this broke the legacy expenditures  
20 down below the operating expenditures, correct?  
21 A. Yes. I'm sure that was intentional.  
22 Q. Right. And that's because, for example, while  
23 payments to the COPs are likely very important to the  
24 COP holders --  
25 A. Right.

1 A. Yes. There's one caveat to that. It is front end  
2 loaded that almost 500,000,000 of that will be spent  
3 in the first six years going forward, but that's the  
4 average over ten years.  
5 Q. Okay. So if -- there's some element of lumpiness to  
6 it.  
7 A. Yes.  
8 Q. It was 500,000,000 over the first --  
9 A. Over the first six years.  
10 Q. Oh, so that's less than 125 a year.  
11 A. No, it's more. It's 500,000,000 over the first six  
12 years -- I believe it's on page 47 -- maybe on page 47  
13 or 48. If you look on page 47, not to go out of  
14 sign -- but if you look at the second to the last bold  
15 line, it says reinvestment in the City. Starting in  
16 2014 you'll see, for instance, the total reinvestment  
17 in the City will be \$188.5 million dollars.  
18 Q. I'm sorry, I blanked on you. What page are you on?  
19 A. Oh, I'm sorry. Page 47, the second to the last bold  
20 line, you will see that in the first year of the  
21 preliminary forecast -- this is in a steady state, so  
22 we're comparing steady state to steady state --  
23 without any adjustments that that reinvestment  
24 expense, total reinvestment in the City will be 188.5  
25 million dollars and --

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1 Q. -- they're not something that you actually use to run  
2 the City.  
3 A. Well, yes, it's not an operating expense.  
4 Q. Right.  
5 A. It's a debt service.  
6 Q. Right.  
7 A payment to a police officer for their  
8 time or for their benefits, that is an operating  
9 expense?  
10 A. Absolutely.  
11 Q. And that's all covered in the operating expenditures.  
12 A. Yeah. Salary over time and fringe benefits, yes.  
13 Q. Okay. So if you follow along in my hypothetical and  
14 we took out what we'll call a hundred -- we'll split  
15 the difference. We'll say it's 175,000,000.  
16 A. Sure.  
17 Q. I'll tell you in here it's projected to be 170 -- why  
18 don't we use the number here. If we took the 170 out,  
19 you'll still have 227.2 million dollars to work with  
20 from the standpoint of a net operating surplus,  
21 correct?  
22 A. Yes, roughly \$230,000,000.  
23 Q. Okay. Your reinvestment plan I believe calls for a  
24 billion and a quarter over ten years and it's commonly  
25 described as being about \$125,000,000 a year.

1 Q. Oh, I see it. Okay.  
2 A. Third line up from the bottom.  
3 But if you wanted to average it, it would  
4 be 125 over ten years.  
5 Q. Oh, I see. And it drops off quite a bit in --  
6 A. Right. After the six years, it drops off to \$32.8  
7 million.  
8 Q. And if I recall, what I had said to you earlier is  
9 that even if we take out the casino revenues, you will  
10 have \$227,000,000 in net operating surplus to work  
11 with. That's where we were before we broke.  
12 A. Right. Operating, but that still does not adjust for  
13 other expenditures, legacy expenditures we call them.  
14 Q. That's true. All of which -- the large majority of  
15 which are unsecured claims in the bankruptcy, correct?  
16 A. Well, if you look on page -- go back to page 38 where  
17 it says net operating surplus, you'll see the first  
18 line below net operating surplus is debt service and a  
19 portion of that one -- portion of that 141.4 for year  
20 2013 or 135.9 for year 2014 is secured debt service.  
21 Q. Some portion of the gold bonds is secure?  
22 A. Some portion is secured, roughly -- roughly  
23 30,000,000.  
24 Q. That's a very appropriate caveat. I will say with  
25 that caveat and with the caveat of the Swaps, the

1 remainder of the claims under legacy expenditures are  
2 ones that you consider unsecure.  
3 **A. Yes. That's how we treated them in our proposal.**  
4 **Q.** And by the way, even with respect to the Swaps, I've  
5 been giving you full credit for the 170 of the casino  
6 revenues, but you actually have to not -- you have to  
7 net the swap payments out against it, at least until  
8 you exercise the --  
9 **A. Yes. Yes, that's correct.**  
10 **Q.** So with respect to the 188, we can agree that the 227  
11 net operating surplus you have, as a matter of math  
12 and subject to your qualifications about certain  
13 secured legacy obligations, is larger than 188?  
14 **A. Yes. The surplus is assuming that we make no pension**  
15 **contributions, we do not service -- you have to back**  
16 **out of that -- you call it 227. I call it 230. You**  
17 **have to back out of there approximately \$30,000,000 in**  
18 **debt service under the LTGO and UTGO --**  
19 **COURT REPORTER: I'm sorry, under the?**  
20 **THE WITNESS: I'm sorry.**  
21 **A. Under the LTGO and UTGO cat -- the bonds category debt**  
22 **service, so that would leave you with a net of roughly**  
23 **200,000,000, and then if you look on the 2014 column,**  
24 **you would see that if -- if some portion of pension**  
25 **contributions were made and some portion of healthcare**

1 **get the 230. If you take out the 30 million in**  
2 **secured bonds, you'd have 200 million, there's so much**  
3 **significant debt that it's not adjusted, we wouldn't**  
4 **have that 200 million.**  
5 **Q.** Let me ask you about something I read in the  
6 newspapers.  
7 **A. Okay.**  
8 **Q.** So I want to ask whether it's true or not. Isn't it  
9 true that two days before the City filed for  
10 bankruptcy you held a meeting with community leaders?  
11 **A. I had a public meeting with the public as well as**  
12 **community leaders. The --**  
13 **Q.** Did you have a closed door meeting with community  
14 leaders two days before --  
15 **A. I'm sorry.**  
16 **Q.** -- the bankruptcy?  
17 **A. Let me correct that. I'm sorry. I was thinking**  
18 **about -- we're looking at this document, so I was**  
19 **thinking about the meeting with creditors.**  
20 **The bankruptcy was July 18th.**  
21 **Q. Yes.**  
22 **A. I believe I did have a meeting with leaders roughly**  
23 **July 16th, is it?**  
24 **Q.** And was it a closed door meeting?  
25 **A. I don't recall, but it may been.**

1 **benefits were made, that would essentially wipe out**  
2 **the 200,000,000, and that's not dealing with the COPs**  
3 **or the Swaps payment.**  
4 **Q.** It is however your expectation that substantial  
5 portions of retiree health and benefits will be  
6 deferred at a minimum?  
7 **A. They essentially have to be because we won't have the**  
8 **money.**  
9 **Q.** That's right. And also pension contributions,  
10 substantial parts of those are being deferred at a  
11 minimum?  
12 **A. This year we deferred some and we are anticipating**  
13 **deferring more, and again -- but that creates a**  
14 **deferred pension obligation. There are two things**  
15 **that's missing from this analysis. One is we have a**  
16 **general operating deficit going forth this year, about**  
17 **\$387,000,000, for which there's no provision made in**  
18 **the cash flow analysis, and we have an aggregate**  
19 **deferred pension contribution number close to**  
20 **200,000,000.**  
21 **So while I under -- take your point that if**  
22 **you were to take out from 1.1 billion, deduct the**  
23 **roughly 700 million in operating expenses, would leave**  
24 **you with a net of 400 million, if you were to back out**  
25 **the 170 million or so in wagering expenditures, you**

1 **Q.** Now, it's been reported in the press that during that  
2 meeting one of the things that you said to these  
3 community leaders was that the first thing to be done  
4 to help the City with the City's bankruptcy was to,  
5 "Deal with these Huns on Wall Street."  
6 Did you say that, Mr. Orr?  
7 **A. I may have said that.**  
8 **Q. Okay.**  
9 **A. Some people make misstatements, as witnessed today.**  
10 **So I may well have said that.**  
11 **Q.** I will -- I will suggest to you, earlier, and I want  
12 to reiterate that was truly unintentional.  
13 **A. Steve, as I said, some people may make misstatements,**  
14 **and as I said today it happens.**  
15 **I may have said that.**  
16 **Q.** When you said that about the Huns of Wall Street, I  
17 take it wasn't like a slip of the tongue. Did you  
18 mean to say hey, the first thing I mean to do is deal  
19 with the Huns of Wall Street?  
20 **A. No. Let me explain that. What I meant to say by that**  
21 **is look, we've got to deal with adjusting our debt to**  
22 **the creditors as well as our obligations to the**  
23 **laborers, and I used -- I used I think the**  
24 **nomenclature Huns. It was probably too colloquial,**  
25 **too slip of the tongue.**

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1 I wasn't meaning to impugn anyone's  
2 character. That was an allusion to a statement that  
3 I've seen used before, you've got to keep the Huns out  
4 of the portals, and that's all I meant.  
5 Q. When you talk about the Huns of Wall Street, you mean  
6 banks, bond holders, bond insurers, Swap insurers,  
7 Swap counterparties, etcetera, correct?  
8 A. Whatever's on Wall Street, yes.  
9 Q. Yeah.  
10 A. Largely speaking.  
11 Q. You mean the clients of the folks in this room, in the  
12 main?  
13 A. Well, some of whom were my ex-clients, who probably  
14 will no longer be, but yeah.  
15 Q. I understand. But wouldn't you agree, Mr. Orr, that  
16 while the last, you know -- going back to 2006, when  
17 they had that COPs transaction, I know that it's been  
18 a challenging time in Detroit, but the Huns of Wall  
19 Street were some of the people that kept the City's  
20 lights on by providing credit to the City?  
21 A. Let me say this, and I'm not going to use the word Hun  
22 anymore.  
23 Q. Okay.  
24 A. I've since learned to be very careful with my words.  
25 The capital markets have assisted the City in many,

1 speculative as far as what happened. In fact, before  
2 I took this job, I read several articles that advised  
3 the City to file bankruptcy in 2005. So I'm going to  
4 be careful about what would have happened if the City  
5 had not received that 1.4, because at that time, my  
6 understanding -- I wasn't here, but from what I read  
7 that was to supposed to secure the unfunded portion of  
8 the pension liability at that time, and it didn't work  
9 out so well, but there was provision of credit to the  
10 City.  
11 Q. In your mind, when you made the statement, were you  
12 trying to convey to people that you view the  
13 pensioners' claims or the retirees' claims or the  
14 current employees' claims for pension benefits or --  
15 or health benefits as more important than the claims  
16 of unsecured creditors like Wall Street participants  
17 such as my client?  
18 A. No. I was not trying to make any value judgments  
19 about the claims. What we had done -- here again, as  
20 I said, it was a colloquialism that I made in a closed  
21 door meeting, but I was not trying to convey to anyone  
22 that we were treating any class of creditors --  
23 unsecured creditors differently than the others. As  
24 provided for in our proposal, we were treating them  
25 all equally.

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1 many ways over the years, and as I said before earlier  
2 today, in addition to providing funding in 2008, 2010,  
3 2012 when the City was in very dire straits, so I do  
4 not mean to impugn in any way the help that the  
5 capital markets have provided to the Cities -- to the  
6 City.  
7 What I do mean to say is given the dire  
8 straights that the City is in, and the fact that under  
9 any set of circumstances, it can no longer afford to  
10 pay this debt, there has to be adjustment of this  
11 debt, particularly the unsecured debt portion, and  
12 that's both for the capital market community,  
13 including banks, private equity, as well as for the  
14 obligations we owe to our labor counterparts,  
15 including health and pension funds.  
16 Q. In fact, bond holders, the so-called COP holders, as  
17 part of the 2006 transaction, they contributed a  
18 billion four that ultimately went into the pension  
19 funds, correct?  
20 A. I believe that was the number, yes.  
21 Q. And if that hadn't happened back then, all things  
22 being equal you'd have an even larger unfunded pension  
23 liability than you currently do, right?  
24 A. Well, I'm going to be careful about what would have  
25 happened because it may have -- you know, it's

1 Q. We're coming up on the one o'clock hour, which is  
2 almost the end of my time, and I think I'm going to  
3 just ask you a couple questions to tie up and then --  
4 A. Sure.  
5 Q. -- I'll allow you to go get a well-deserved lunch.  
6 A. Thank you.  
7 Q. I've asked you earlier about selling the art and I  
8 asked you about it as considering it as a potential  
9 backup plan to the negotiations with the Swap  
10 counterparties.  
11 A. Right.  
12 Q. Do you remember that testimony?  
13 A. Yes, I do.  
14 Q. We went back and forth.  
15 A. Yes.  
16 Q. I'd like to bring it forward to the future, to the  
17 present.  
18 A. Yes.  
19 Q. Which is, are you under active consideration now of  
20 using the art to alleviate the liquidity crisis and to  
21 do all of the things that you say you want to do in  
22 this proposal?  
23 A. No. There are no plans to use the art or any other  
24 asset in particular to liquidate it to  
25 relieve liquidity issues in the City. What I have

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1 said when I first took this job, and continue to say,  
2 all options are on the table. We are currently  
3 beginning the process of appraising approximately  
4 3,500 pieces of art in the City of the 66,000 that are  
5 there at the DIA, and once we go through that process,  
6 we will have to decide what, if anything, we need to  
7 do, but I have no plans to use art to relieve the  
8 liquidity crisis that the City is in now.  
9 Q. So let me offer an observation for you to react to,  
10 which is, earlier on when I was asking you questions,  
11 you were telling me about the terrible things  
12 happening in the City, people dying, being shot, the  
13 seriousness of the problems with which you're  
14 grappling.  
15 A. Yes.  
16 Q. You've also identified the assumption motion as  
17 something that needs to be moved along quickly because  
18 of its importance to the issues that we discussed,  
19 right?  
20 A. Right.  
21 Q. Why isn't the art equally important to allowing you to  
22 fix Detroit?  
23 A. I haven't said that it's not important. What I've  
24 said is there are no plans to liquidate it to address  
25 those concerns. I think it is fair to say that there

1 process.  
2 Q. Just a few more questions and I'll pass the baton.  
3 A. Sure.  
4 Q. I take it that when you were appointed as emergency  
5 fin -- emergency manager, you familiarized yourself  
6 with some of the prior negotiations that had gone on  
7 around efforts to resolve the Swap that I believe were  
8 referenced in the 2012 CAFR of the City of Detroit.  
9 A. Consolidated report, yes.  
10 Q. You at least made inquiry as to what happened last  
11 year when you tried to work this out.  
12 A. Yes.  
13 Q. And it's also your understanding that the potential  
14 right of the Swap counterparties to terminate the Swap  
15 and demand a large termination payment goes back all  
16 the way to March of 2012; isn't that correct?  
17 A. At least, yes.  
18 Q. Thinking that's consistent with your report here --  
19 A. Yes.  
20 Q. -- you say that.  
21 A. Yes.  
22 Q. So isn't it true that from March 2012 all the way to  
23 June 4, when Mr. Buckfire went into the negotiating  
24 room for the first time with the Swap counterparties,  
25 during that entire time, the Swap counterparties had

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1 has been much debate as to the value of art versus  
2 alleviating a number of other concerns, and I've heard  
3 that debate and I've listened to it, but our first  
4 order of business is to assess what we're talking  
5 about and then we'll decide what, if anything, we need  
6 to do.  
7 Q. Isn't it fair to say that you certainly haven't put  
8 the art time line, in terms of your decision-making  
9 process, you haven't given it the same sort of speed  
10 you've given to the forbearance agreement time line?  
11 MR. SHUMAKER: Object to the form.  
12 A. Yeah. I think it's fair to say that in our proposal I  
13 think we included roughly 15 buckets of assets, and  
14 none of them have been given the same priority that we  
15 deem the forbearance agreement principally because  
16 we're not in default with regard to art. We're in  
17 default with regard to the Swap agreement.  
18 Q. Well, that was actually going to be my point, which  
19 is, you own the art.  
20 A. Yes.  
21 Q. So you don't have to negotiate with anybody in order  
22 to sell it, right?  
23 A. No, but a prudent thing to do, and we've said this  
24 before, is to find out what we're talking about first,  
25 and that's why we're going through an appraisal

1 never trapped cash?  
2 A. To the best of my knowledge, that's true.  
3 Q. And they had never declared a termination event?  
4 A. To the best of my knowledge -- to the best of my  
5 knowledge, that's true.  
6 MR. HACKNEY: Mr. Orr, I'd like to thank  
7 you for your time. We have -- as I mentioned, we have  
8 divided up our examination. There are a number of  
9 different objectors here. I have attempted to  
10 coordinate some of the common subjects so that we  
11 could have --  
12 THE WITNESS: Sure.  
13 MR. HACKNEY: -- one 4-hour period that we  
14 have come nearly to the end of, and I'm going to pass  
15 the baton to my other objectors. I may review my  
16 notes to see if I have follow-up.  
17 THE WITNESS: Sure.  
18 MR. HACKNEY: And so I'll reserve my time  
19 technically, but I want to get out of the way of the  
20 other folks so they can start asking questions. And  
21 consistent with what we discussed earlier, I thought  
22 we might take a short lunch break.  
23 THE WITNESS: Sure.  
24 MR. HACKNEY: Off the record.  
25 VIDEO TECHNICIAN: The time is 12:57 p.m.

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1 this marks the end of tape Number 3. We are off the  
2 record.  
3 (Recess taken at 12:57 p.m.)  
4 (Back on the record at 1:48 p.m.)  
5 **VIDEO TECHNICIAN:** We are back on the  
6 record at 1:49 p.m. This marks the beginning of tape  
7 number 4.  
8 **EXAMINATION**  
9 **BY MS. DiBLASI:**  
10 Q. Good afternoon, Mr. Orr. My name is Kelly DiBlasi.  
11 I'm an attorney at Weil, Gotshal & Manges. We  
12 represent Financial Guaranty Insurance Company, which  
13 people generally refer to as FGIC.  
14 A. FGIC.  
15 Q. As I go through my questions with you this afternoon,  
16 if you could please assume that the same ground rules  
17 that Mr. Hackney discussed with you earlier today  
18 still apply.  
19 A. Yes.  
20 Q. You spoke to Mr. Hackney earlier today about the Swap  
21 contract and the fact that they hedge against the  
22 interest rate risks that's associated with the series  
23 2006-B COPs, correct?  
24 A. Yes.  
25 Q. And what is your understanding of how this hedge is

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1 yes, I did some -- I had some discussions and analyses  
2 about why they were structured the way they are.  
3 Depending upon how far back your question is asking  
4 about that analyses, it may or may not be true.  
5 Q. So -- so let's in particular go back to 2005 --  
6 A. Right.  
7 Q. -- which is really when the structure initially was  
8 put in place, correct?  
9 A. Yes, I believe so.  
10 Q. And what is your understanding as to why in 2005 the  
11 transaction was structured so that the COPs -- the  
12 series 2005-B COPs had a variable interest rate hedged  
13 with the Swap contracts?  
14 **MR. SHUMAKER:** Objection to form,  
15 foundation.  
16 A. Yeah. Let me say I only know what I've read, and it  
17 seemed to say that that was the nature of the  
18 transaction based upon the certificates of  
19 participation to lend the City ultimately the 1.4  
20 billion dollars, and that I don't know the intent of  
21 why they did not at that point provide for a fixed  
22 rate, but I know that the Swap contract was entered  
23 into the hedge against the variable rate that was in  
24 the original document.  
25 **BY MS. DiBLASI:**

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1 accomplished?  
2 A. As we discussed earlier today, depending upon the  
3 interest rate fluctuations, they're supposed to  
4 convert the fix rate that was in the original  
5 documents -- variable rates some people say -- to a  
6 fixed rate based upon whether interest rates go up or  
7 down. And since the parties have essentially bet  
8 against each other, depending upon which way the rates  
9 go, one party may owe an obligation to the other.  
10 Q. So based on that understanding that you just  
11 articulated, is it fair to say that from the City's  
12 perspective, it's as if the series 2006-B COPs have a  
13 fixed rate of interest?  
14 A. That was the intent. That's my understanding.  
15 Q. Have you ever heard of a structure like this being  
16 referred to as creating a synthetic fixed rate of  
17 interest?  
18 A. Yes. I may have heard that. There are  
19 other phrase -- I think I've read that somewhere.  
20 Q. Prior to executing the forbearance agreement, did you  
21 do anything to inform yourself about the structure of  
22 the COPs and the Swap contracts and in particular why  
23 they were structured the way that they were?  
24 A. If I can address your question in two ways, yes, I did  
25 something to inform myself about the structure, and

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1 Q. Would you answer the same if I asked you as to why it  
2 was structured that way in 2006?  
3 A. Yes.  
4 **MR. SHUMAKER:** Same objection.  
5 A. Yes. I don't know the intent behind the parties at  
6 that time.  
7 **BY MS. DiBLASI:**  
8 Q. Do you know who designed the structure either in 2005  
9 or 2006?  
10 A. Other than the parties that appear on the documents,  
11 no, I do not know who designed the structure. I don't  
12 know if it was their counsel or the principals. No, I  
13 don't know.  
14 Q. Is there any benefit to the City from having  
15 the 2000 -- series 2006-B COPs have a floating rate of  
16 interest hedged by the Swap contract as opposed to  
17 just issuing them with a fixed rate of interest?  
18 A. I don't -- as I just said, I don't know what the  
19 parties were thinking back in 2005 and 2006, as  
20 opposed to -- as to why they wanted that structure,  
21 and so any statement I would have would either be a  
22 derivative based on what I read or speculative on what  
23 I think was going on in the capital markets at that  
24 time.  
25 Q. Understood. Today can you -- are you aware of any

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1 benefit from that structure that I described?  
 2 **A. Well, the -- yes.**  
 3 **Q. What benefits are you aware of?**  
 4 **A. The benefit currently is, given the debt that was**  
 5 **taken out and the Swap contract, the interest rates**  
 6 **could actually make the optional termination payment**  
 7 **decrease.**  
 8 **Q. Are there any other benefits that you're aware of?**  
 9 **A. Not principally, no.**  
 10 **Q. Would the City have had to pay higher interest rates**  
 11 **if the COPs were issued with fixed rates?**  
 12 **A. I don't know.**  
 13 **Q. Would the City have agreed to a structure where the**  
 14 **2006-B COPs were issued with a floating interest rate**  
 15 **without having a Swap contract in place?**  
 16 **A. I don't know.**  
 17 **Q. And you're aware of the fact that FGIC and Syncora**  
 18 **each insured portions of the payment of principal and**  
 19 **interest to the series 2006-B COPs, correct?**  
 20 **A. That is my understanding.**  
 21 **Q. Are you aware of any benefit to FGIC and Syncora as**  
 22 **insurers of these variable rate certificates to having**  
 23 **the interest rate hedge in place?**  
 24 **MR. SHUMAKER: Objection to form.**  
 25 **A. None, other than the fact that they might be able to**

1 **Q. Are you aware that when FGIC issued the policies in**  
 2 **2006 insuring the Swap contracts, FGIC did not charge**  
 3 **a premium in addition to the premium charged for the**  
 4 **2006 COPs policy?**  
 5 **A. No.**  
 6 **MR. SHUMAKER: Objection, form, foundation.**  
 7 **A. Yeah. No.**  
 8 **MARKED FOR IDENTIFICATION:**  
 9 **DEPOSITION EXHIBIT 5**  
 10 **1:56 p.m.**  
 11 **BY MS. DiBLASI:**  
 12 **Q. Mr. Orr, I'm going to hand you what I've marked as Orr**  
 13 **Exhibit 5.**  
 14 **A. Yes.**  
 15 **Q. The documentation is entitled Presentation to FGIC.**  
 16 **It's dated April 26, 2005. If you'd please take a**  
 17 **moment to look at it and tell me when you've had an**  
 18 **opportunity to do so.**  
 19 **A. Okay.**  
 20 **Q. Mr. Orr, have you seen this Exhibit Number 5 before?**  
 21 **A. I may have, but I don't recall doing so.**  
 22 **Q. What is your sense for what this document is?**  
 23 **A. I think the document speaks for itself, but it seems**  
 24 **to be a SlideDeck regarding -- Presentation to FGIC is**  
 25 **what it's titled regarding the series 2005**

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1 **benefit based upon interest rate fluctuations, but not**  
 2 **aware of any other benefit or what the intent of the**  
 3 **parties were.**  
 4 **BY MS. DiBLASI:**  
 5 **Q. Are you aware of any harm or risk that FGIC or Syncora**  
 6 **might insure if the Swap contracts are terminated?**  
 7 **A. I think there are some risks that they insured as a**  
 8 **basis of an insurer, yes.**  
 9 **Q. What risk might that be?**  
 10 **A. There -- in terms of the Swaps? There may be some**  
 11 **risk that a claim could be made to the extent payments**  
 12 **weren't made.**  
 13 **Q. And would there be any risk to FGIC and Syncora with**  
 14 **respect to the insurance policies on the COPs**  
 15 **themselves if the Swap contracts are terminated?**  
 16 **MR. SHUMAKER: Objection, calls for**  
 17 **speculation.**  
 18 **A. Yeah. I mean, you say there may be, but I'm -- I'm**  
 19 **not aware of any specific certain risks, no.**  
 20 **BY MS. DiBLASI:**  
 21 **Q. Are you aware of the fact that FGIC and Syncora -- and**  
 22 **I think you alluded to this just a minute ago -- that**  
 23 **FGIC and Syncora also insured the obligations to the**  
 24 **Swap counterparties under the Swap contracts, correct?**  
 25 **A. Yes.**

1 **certificates of participation.**  
 2 **Q. In looking at it, does that refresh your recollection**  
 3 **of whether you may have seen it before?**  
 4 **A. No.**  
 5 **Q. Does it appear to you that this presentation was**  
 6 **prepared by the City of Detroit?**  
 7 **MR. SHUMAKER: Objection, foundation.**  
 8 **A. No. I can't say that. It has the City of Detroit**  
 9 **logo. It's a green giant on it, but that doesn't mean**  
 10 **it was prepared by the City of Detroit.**  
 11 **BY MS. DiBLASI:**  
 12 **Q. Let's turn now, Mr. Orr, to the topic of the consent**  
 13 **rights or -- of FGIC and Syncora topic that you were**  
 14 **discussing with Mr. Hackney earlier.**  
 15 **A. Yes.**  
 16 **Q. And actually, let's focus specifically on the**  
 17 **negotiations that the City engaged in with the Swap**  
 18 **counterparties leading up to the execution of the**  
 19 **forbearance agreement.**  
 20 **A. Okay.**  
 21 **Q. And when you were speaking with Mr. Hackney, you**  
 22 **testified that you yourself did not invite either FGIC**  
 23 **or Syncora to those negotiations, correct?**  
 24 **A. Yes. To the best of my knowledge, that's true.**  
 25 **Q. And I believe you said you also didn't suggest to**

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1 anyone else that they should invite FGIC or Syncora to  
2 those negotiations, correct?  
3 **A. Yes. I believe I testified I did not instruct anybody**  
4 **to invite them.**  
5 **Q. To your knowledge, did anyone else suggest inviting**  
6 **either FGIC or Syncora to the negotiations?**  
7 **A. As I testified earlier today, there were a series of**  
8 **letters that were exchanged, and at some point there**  
9 **was some discussion about Syncora submitting a**  
10 **proposal. That discussion was wrapped up into whether**  
11 **or not it would sign a reciprocal nondisclosure**  
12 **agreement. To the best of my knowledge, that never**  
13 **happened.**  
14 **Q. But I think we established that the letter exchanged**  
15 **with Syncora occurred at some point after June 11th,**  
16 **when there had been an agreement in principle on the**  
17 **economic terms of the forbearance agreement; is that**  
18 **correct?**  
19 **A. Yes. I believe we -- we testified that June 11th we**  
20 **reached agreement and principally documented,**  
21 **June 14th we had the presentation for creditors, and**  
22 **the letter I saw earlier today I think was dated**  
23 **June 17th.**  
24 **Q. That's right. So prior to June 11th, did anyone else**  
25 **to your knowledge suggest inviting either FGIC or**

1 **negotiations would have to be determined.**  
2 **Q. So I think you said you -- you thought maybe it was**  
3 **someone from your -- Jones Day who had initiated or**  
4 **who had participated in -- in this discussion?**  
5 **A. Yes. I believe someone on the finance side at Jones**  
6 **Day, yes. They may have. I seem to recall some**  
7 **discussion about they had had discussions with FGIC.**  
8 **Q. Do you have any recollection as to when that took**  
9 **place?**  
10 **A. I do not. It may be prior to the July -- June 11th**  
11 **agreement in principle after, but I don't have a**  
12 **specific recollection.**  
13 **Q. When you were speaking with Mr. Hackney about the**  
14 **negotiations with the Swap counterparties that you**  
15 **personally took part in, I believe you said that you**  
16 **had participated in a number of conference calls; is**  
17 **that correct?**  
18 **A. Yes.**  
19 **Q. Was FGIC or a representative of FGIC on any of those**  
20 **conference calls?**  
21 **A. No. The conference calls I was referring were**  
22 **conference calls between me and my attorneys. There**  
23 **were conference calls that I had with Mr. Buckfire and**  
24 **a principal on behalf of Syncora, but to the best of**  
25 **my knowledge, there weren't FGIC representatives on**

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1 Syncora to the negotiations?  
2 **A. Not to my knowledge, no.**  
3 **Q. And you mentioned just a minute ago that there had**  
4 **been some discussion with Syncora or representatives**  
5 **of Syncora about an alternative proposal to the**  
6 **forbearance agreement, and I think you said to**  
7 **Mr. Hackney that there had been no negotiations with**  
8 **FGIC about an alternative proposal; is that correct?**  
9 **MR. SHUMAKER: Objection to form.**  
10 **A. Yeah, it's a compound question, but I think the way I**  
11 **would answer it, yes, we would talk about whether or**  
12 **not someone had been invited. And I think what I said**  
13 **is to the best of my knowledge I did not invite FGIC**  
14 **and I did not know if anybody else did.**  
15 **BY MS. DiBLASI:**  
16 **Q. To your knowledge, was there any negotiations by the**  
17 **City with FGIC about the forbearance agreement prior**  
18 **to the City executing the forbearance agreement?**  
19 **A. There may have been. I seem to recall one of our**  
20 **attorneys -- you used the word negotiation and, here**  
21 **again, as I said earlier today, without getting caught**  
22 **up in the nomenclature, I don't want to characterize**  
23 **what was going on, but I think there was -- I remember**  
24 **hearing something about some discussions with FGIC,**  
25 **but I don't recall who. Whether or not there were**

1 **those calls.**  
2 **Q. So you were not on any conference calls with the Swap**  
3 **counterparties negotiating the terms of the**  
4 **forbearance agreement?**  
5 **A. Yes. Yeah, I -- let me correct myself.**  
6 **Q. Sure.**  
7 **A. I said -- I just said Syncora. I think I meant the**  
8 **Swap counterparties.**  
9 **Q. Okay.**  
10 **A. There were no conference calls. There were letters**  
11 **with Syncora, not conference calls with Syncora.**  
12 **Q. Just so I'm clear in my understanding, did you**  
13 **participate in conference calls with the Swap**  
14 **counterparties negotiating the terms of the**  
15 **forbearance agreement?**  
16 **A. Yes.**  
17 **Q. Was FGIC or a representative of FGIC on any of those**  
18 **conference calls?**  
19 **A. No. To the best of my knowledge, no.**  
20 **MS. DiBLASI: Thank you for your time,**  
21 **Mr. Orr. That's all I have.**  
22 **THE WITNESS: Sure. Thank you very much,**  
23 **Mrs. DiBlasi.**  
24 **MR. HACKNEY: I was worried that I missed a**  
25 **pretty significant area of inquiry there.**

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1 **THE WITNESS:** I was looking at this letter  
2 and Syncora popped into my head, so that's -- long  
3 day.  
4 **EXAMINATION**  
5 **BY MR. MARRIOTT:**  
6 Q. Good afternoon, Mr. Orr.  
7 A. Good afternoon.  
8 Q. I'm Vince Marriott. I'm with Ballard Spahr, and I  
9 represent a holder of 152 million dollars in the 2006  
10 COPs. We refer to it by agreement as EEPK, and I hope  
11 we can stipulate that I will have to pronounce the  
12 entire name for you.  
13 **MR. SHUMAKER:** Stipulated.  
14 A. Mr. Marriott, we will stipulate as such.  
15 **BY MR. MARRIOTT:**  
16 Q. Ironically enough it's German.  
17 A. We wouldn't try.  
18 Q. Mr. Hackney was very comprehensive and I don't have a  
19 lot.  
20 A. Okay. Yes, he was.  
21 Q. One of the things you -- one of the things Mr. Hackney  
22 asked you about was if in the course of the  
23 negotiation of the forbearance agreement, you had what  
24 he referred to as a plan B. Do --  
25 A. Right.

1 need for the casino revenue, which was urgent and  
2 critical and would not in our opinion at that point be  
3 able to make a reinvestment of the City, what would  
4 the City look like going forward.  
5 Q. Let me ask you the question this way. Did you  
6 consider what I'll describe -- and if you want me to  
7 be more specific I can try to be.  
8 A. Um-hm.  
9 Q. Did you consider capital market alternatives to the  
10 forbearance agreement?  
11 A. We did, but to be perfectly honest with you, the City  
12 had borrowed so much money from the capital markets  
13 without the probability of being able to pay it back  
14 on any reasonable or rational time frame that that  
15 wasn't a serious consideration was taking on more  
16 debt.  
17 Q. Okay. So you didn't really believe that had you a  
18 what we -- what I just described as a capital market  
19 alternative to the forbearance agreement?  
20 A. The City has no -- what I've said at the June 10th --  
21 public meeting on June 14th we were addicted to debt  
22 and we had no ability to take on additional debt.  
23 Q. Okay. All right. And this may re-plow some ground  
24 and I apologize to the extent it does, but in the  
25 context of your negotiation of the forbearance

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1 Q. -- you recall him asking that question?  
2 A. Yes, I recall that discussion. Yes.  
3 Q. And you responded by saying, without specifically  
4 having a plan B, you had considered alternative to the  
5 forbearance agreement structure, correct?  
6 A. Correct.  
7 Q. Can you tell me what alternatives to the forbearance  
8 agreement you considered at the time?  
9 A. Without getting into the discussions with my counsel  
10 or with commercially sensitive information with the  
11 investment banker and/or both, the alternatives  
12 generally centered on the need for reinvestment in the  
13 City and what we would do if we could not secure the  
14 funds to have that reinvestment and what kind of  
15 reinvestment proposal, if any, we could put together.  
16 Q. And are you able to articulate more specifically  
17 whether you consider -- or what specifically you  
18 considered as alternative source of the funding for  
19 reinvestment?  
20 A. I think as I said with Mr. Hackney just before the  
21 break, I have said fairly consistently since I've been  
22 here that everything's on the table, but we had not  
23 specifically looked at liquidation of any particular  
24 bucket of assets in relation to this. All we had  
25 considered was if we could not secure the critical

1 agreement, and by yours I mean the City's --  
2 A. Yes.  
3 Q. -- it was with the understanding that the Swap  
4 counterparties asserted a lien in the casino revenues,  
5 right?  
6 A. Yes.  
7 Q. Would the City have entered into the forbearance  
8 agreement with the Swap counterparties if they did not  
9 assert a lien in the casino revenues?  
10 **MR. SHUMAKER:** Objection, calls for  
11 speculation.  
12 A. Yeah. I was going to say that's a hypothetical, and  
13 it would depend on a number of different issues, so  
14 I'm not quite sure I can answer you. All I can say is  
15 that our need for that cash was so significant that we  
16 might well have considered anything.  
17 **BY MR. MARRIOTT:**  
18 Q. All right. Let me ask the question this way then. Is  
19 it fair to say that the optional termination amount of  
20 pay will be paid by the City to obtain clear title to  
21 the casino revenues?  
22 **MR. JURGENS:** Objection to form.  
23 **MR. SHUMAKER:** Objection, form and calls  
24 for legal conclusion.  
25 A. Without getting into the concept of title, what I will

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1 say, and what I've said today, is the forbearance  
2 agreement is designed to remove uncertainty with  
3 regard to the City's access to the casino revenue  
4 which is essential.

5 BY MR. MARRIOTT:

6 Q. All right. Let me ask the question this way. Is it  
7 your understanding that the Swap counterparties will  
8 no longer assert a lien in the casino revenues if paid  
9 the optional termination amount?

10 MR. JURGENS: Objection --

11 A. Yes.

12 MR. JURGENS: -- to form.

13 A. It's my understanding that it's going to resolve all  
14 those issues, and as I said earlier today, including a  
15 release of liens to the extent they have any.

16 BY MR. MARRIOTT:

17 Q. Okay. Now, I understand your description of the  
18 City's current operational needs --

19 A. Right.

20 Q. -- for access to the casino revenues.

21 A. Yes.

22 Q. If those casino revenues were otherwise available to  
23 the City, for current operation's purposes, would  
24 removal of the lien be necessary -- or removal of the  
25 asserted lien be necessary?

1 A. Um-hm.

2 Q. -- necessary for the City to currently operate?

3 A. To currently operate?

4 Q. Yes.

5 MR. SHUMAKER: Object to the hypothetical.

6 Go ahead.

7 A. If you're drawing a distinction between currently  
8 operating and the reinvestment plan that we have, what  
9 I would say is we are currently operating in the  
10 status quo. So the answer to your question would be  
11 to the extent the Swap counterparties have a lien  
12 interest in the casino revenue, it would not be  
13 necessary because that's where we are now.

14 BY MR. MARRIOTT:

15 Q. Okay. And so what do you view release of the lien as  
16 necessary to?

17 A. The release of the lien is essential so that the City  
18 has certainty in terms of going forward so that we can  
19 plan, as is required both under Chapter 9, but more  
20 importantly, in my perspective, under Chapter -- under  
21 Public Act 436.

22 436 imposes an obligation on me within  
23 18 months to come up with a plan to put the City on a  
24 sustainable footing going forward before the  
25 expiration of my term, and even if you could come up

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1 MR. SHUMAKER: Objection, calls for  
2 speculation.

3 A. Yeah, this again is a hypothetical question, but I  
4 believe you may be alluding to the discussion I had  
5 with Mr. Hackney regarding whether the stay would  
6 provide us unfettered access, and I think what I said  
7 there is that's something we'd have to examine, but  
8 the whole concept of the forbearance agreement was to  
9 deal with removing any uncertainty regarding our  
10 access to the casino revenues so that we could put in  
11 place a reinvestment plan.

12 BY MR. MARRIOTT:

13 Q. Okay. I wasn't clear, I don't think --

14 A. Okay.

15 Q. -- in what I'm trying to get at.

16 A. Sure.

17 Q. I'm not asking you whether or not there was an  
18 alternative to releasing -- I'm just asking whether  
19 you believe there was a legitimate alternative to  
20 release of the lien to get access to those funds.

21 What I'm asking you is that assuming you  
22 had access to those funds on some basis, without the  
23 need to release the lien --

24 A. Um-hm.

25 Q. -- is a release of the lien today --

1 with a plan without release of those liens, that would  
2 leave some uncertainty and would be, in my opinion, a  
3 violation of my duty as emergency manager to provide  
4 that certainty for the City to move forward in a  
5 sustainable fashion.

6 Q. Okay. So and if I'm paraphrasing your answer  
7 incorrectly --

8 A. Right.

9 Q. -- tell me.

10 Release of the lien is necessary to a  
11 viable exit strategy from the Chapter 9 proceeding?  
12 A. That's part of it. Not just the Chapter 9 proceeding.  
13 As I said, I think what's missing in some of the  
14 discussion is the fact that I have an independent duty  
15 under Public Act 436 to put the City on a sustainable  
16 footing. That is my obligation. And leaving liens in  
17 place in a City that has defaulted, as we discussed  
18 earlier today, under multiple different factors would  
19 be irresponsible.

20 Q. One of the other things that Mr. Hackney and you  
21 discussed was whether or not the Swaps and the COPs  
22 and the insurance associated with the Swaps and the  
23 cops --

24 A. Right.

25 Q. -- were what Mr. Hackney described as an integrated

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1 transaction.  
2 A. Um-hm.  
3 Q. Do you recall that discussion?  
4 A. Yes, I do recall that discussion.  
5 Q. Your counsel in a hearing on August 21st -- and I'll  
6 represent this to you --  
7 A. Okay.  
8 Q. -- whether you're aware of it or not. It described  
9 the 2009 transaction with respect to the COPs and the  
10 Swaps as severing the tie --  
11 A. Um-hm.  
12 Q. -- Between the COPs and the Swaps. Do you have an  
13 understanding of what that means?  
14 MR. SHUMAKER: Objection to form.  
15 A. I have not consulted with my counsel regarding what  
16 was meant by that statement, so I'm going to qualify  
17 my answer by saying to the extent it calls for a legal  
18 conclusion or an analysis, that this is my  
19 understanding in a layman's sense.  
20 But what I think -- and your question began  
21 with the concept of the insurance for the COPs and  
22 Swaps, so I also want to say my understanding there  
23 may be different insurance obligations related to the  
24 COPs that in our view are unrelated to the obligations  
25 under the Swaps. I don't want to conflate the two.

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1 And further, anything I can say in that  
2 regard, because I have not talked to my counsel, would  
3 be speculative as far as what they meant. Okay? But  
4 what my understanding is, is that that would relieve  
5 us under the agreement, forbearance agreement, of any  
6 of the obligations that are necessary under the Swaps.  
7 I sincerely don't know what that statement means with  
8 regard to the COPs.  
9 BY MR. MARRIOTT: That's all I have. Thank  
10 you.  
11 THE WITNESS: Thank you, sir.  
12 EXAMINATION  
13 BY MS. ENGLISH:  
14 Q. Hi, there.  
15 A. Hi. How are you?  
16 Q. Good. How are you?  
17 A. I am well. Thank you.  
18 Q. I'm Caroline English.  
19 A. Hi, Caroline.  
20 Q. We met before in the Chrysler case and I don't know if  
21 you recall.  
22 A. Oh, you know --  
23 Q. We can talk later. It's all right.  
24 A. Yeah. We will talk later. I was going to say I  
25 recognized you over there.

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1 Q. Yeah. So I'm from Arent Fox?  
2 A. Okay.  
3 Q. And this time I reco -- I represent Ambac.  
4 A. Okay.  
5 Q. Okay?  
6 A. Okay.  
7 Q. I'm going to apologize in advance in advance if I jump  
8 around a little bit or seem to jump around because I'm  
9 going to try to plug some holes from your earlier four  
10 and a half hours of testimony that you've given  
11 already.  
12 A. Thank you.  
13 Q. Okay. Same rules apply, right?  
14 A. Yes.  
15 Q. Okay. This is a small question. Earlier in response  
16 to Mr. Hackney, his questioning, he asked you a  
17 question about the collateral agreement and your  
18 response was which collateral agreement.  
19 A. Um-hm.  
20 Q. I want to make sure. Is there any other collateral  
21 agreement other than the 2009 collateral agreement  
22 we've spoken about?  
23 A. No. I just think that was earlier on in my deposition  
24 by Mr. Hackney, and I just wanted to make sure we were  
25 being specific about the terms. I wasn't meaning to

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1 allude to another collateral agreement.  
2 Q. That's fine. I just wanted to make sure I --  
3 A. Sure.  
4 Q. -- didn't miss a large transactional document here.  
5 Okay?  
6 A. Sure.  
7 Q. Mr. Hackney also asked you some questions about the  
8 service corporations and about whether there were any  
9 negotiations on behalf of the City with the service.  
10 Corporations?  
11 A. Yes.  
12 Q. Okay. I believe you answered that negotiating with  
13 service corporations would not have been your job. It  
14 would have been Ken Buckfire's or someone else's job  
15 to do that.  
16 A. Yes. I believe that's right.  
17 Q. Okay. If it wasn't Ken Buckfire's job, who else's job  
18 would it have been?  
19 A. It might have been someone else on his team or at  
20 Miller Buckfire or someone else on behalf of the other  
21 counsel for the emergency manager or the City.  
22 Q. Someone else in your office you mean?  
23 A. No. No. Other consultants and attorneys on behalf of  
24 the City.  
25 Q. Okay. But am I correct that no one has reported to

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1 you that they had negotiations with the service  
2 corporations; is that correct?  
3 A. Yeah, reported. I'm going to be careful. My  
4 understanding was we had an agreement, I signed it,  
5 and it was sent to the service corporations. I  
6 personally had no negotiations with them, but my  
7 understanding, based upon the fact it was executed,  
8 that whoever needed to procure and secure those  
9 signatures did so.  
10 Q. You don't know who got those signatures from the  
11 service corporations?  
12 A. No. Sitting here today I do not.  
13 Q. You also testified earlier -- Mr. Hackney's helping me  
14 out here.  
15 Do you -- are you assuming then that there  
16 were some negotiations between the City and the  
17 service corporations?  
18 A. Yeah. Here again, I'm going to say whenever you -- as  
19 I said to Mr. Hackney, whenever you talk about  
20 negotiations, you know, so we don't get bogged down in  
21 nomenclature, I'm assuming that something happened  
22 that had the service corporations aware of the  
23 agreement, that they agreed to and they signed off on  
24 it. So if those constitute negotiations, that's what  
25 I'm assuming, but I'm saying to you that I had no

1 Q. Let me back you up to the start of your answer, which  
2 was that my predicate you did not believe to be true.  
3 A. Yes.  
4 Q. So let me ask you a question. To your knowledge was  
5 any request of any kind ever made to the State for  
6 aid?  
7 A. Here's -- I'm not trying to be evasive, but here's the  
8 issue I'm having with your question. It's not so much  
9 if there was ever a request. As I said earlier today,  
10 I have regular discussions with the governor and other  
11 officers on behalf of the State, and it became clear  
12 to us in terms of whether or not it was made -- a  
13 request seems to suggest that we asked the State for  
14 money and they said no, and what I'm saying to you is  
15 we had a discussion that even if that was an  
16 alternative in some fashion, me or a representatives  
17 on my behalf -- I don't remember -- that the State  
18 couldn't do that in any event, so I'm not sure there  
19 was a request made. What I'm trying to say is that it  
20 became clear that that was not an option.  
21 Q. In other words, it became clear to you that making any  
22 such requests would have been futile.  
23 A. Yeah, I'm staying away from request. It just became  
24 clear that the State couldn't do that, yes, one way or  
25 the other.

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1 independent negotiations and I don't know who did  
2 that.  
3 Q. And you don't have any idea sitting here today about  
4 what those negotiations would have involved, how they  
5 happened, when they happened, how long they took,  
6 anything like that; is that right?  
7 A. That's right.  
8 Q. You testified earlier about state aid and federal aid,  
9 the possibilities of getting aid from other government  
10 sources.  
11 A. Yes.  
12 Q. With respect to state aid, when did the City make a  
13 request of any kind to the State for aid?  
14 MR. SHUMAKER: Objection, foundation.  
15 A. Assuming the predicate that some request was made,  
16 which I don't think is true, what became clear from  
17 various discussions with the State was that this was a  
18 hole that the City had dug for itself and it needed to  
19 find its way out of it on its own.  
20 I think at some point we were also informed  
21 that there are State prohibitions against the State  
22 lending money to the City, either state ordinances --  
23 State statutes or constitutional prohibitions, so that  
24 would not have been a possibility in any event.  
25 BY MS. ENGLISH:

1 Q. All right. I have the same questions about federal  
2 aid, and let me start again with the predicate. Was a  
3 request ever made of any kind for federal government  
4 aid?  
5 A. Not by me. Not for -- well, let me correct that. Not  
6 for direct federal government aid in the terms of  
7 either a loan or a grant, meaning money. I did have a  
8 meeting with Senator Levin where he informed me and  
9 actually gave me a list of a number of different grant  
10 programs, ordinary grant programs, that are available  
11 to the City, as well as other cities, by which we  
12 could apply for additional grants and we're reviewing  
13 those now.  
14 So I want to be clear when people say  
15 federal aid, it became clear to us that no one was  
16 going to give us, for lack of a better word -- people  
17 use the word bailout, which I don't like -- but a  
18 direct grant of money, but there are other programs  
19 that the City can apply for to get federal assistance.  
20 Q. Okay. With respect to the federal grant programs you  
21 just mentioned, at this point in time, have any  
22 applications been submitted for any of these grant  
23 programs?  
24 A. At this point in time, there may -- there may be. We  
25 received that a couple weeks ago and I know two things

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1 as has been reported. We're currently doing an  
2 analysis of our grants administration and application  
3 process to make it better, and I think we're also  
4 reviewing it for making specific grant requests, I  
5 think some specifically related to public safety.  
6 So I don't know if -- sitting here today if  
7 actual documents have been submitted, but I know we  
8 are mining the federal programs with an eye toward  
9 making applications and some have been made or some  
10 are near to being made.  
11 Q. Are there specific grants you're targeting in this  
12 application process?  
13 A. That's handled by the folks in the City bureaucracy  
14 and consultants, so I -- as I said, health, safety and  
15 welfare, meaning police, fire, EMT, City grants  
16 meaning blight, HUD grants and others, yes, but  
17 sitting here today, I don't know which specific ones  
18 have been submitted.  
19 Q. And who was handling that process?  
20 A. Ultimately, in my office, it would be a combination of  
21 the existing -- hopefully in the City as well --  
22 existing grant procurers, you know, whether they're at  
23 different departments in planning and development,  
24 police and fire. It would be at that level, at a line  
25 level, would be applying for grants.

1 A. You asked me if there were any new ones going in.  
2 Q. Okay.  
3 A. We -- the City has received, in past years and  
4 currently, almost 300 million dollars in federal  
5 grants.  
6 Q. Okay.  
7 A. Okay. We hoped -- and they're being administered  
8 through 71 different programs in the City. I think  
9 that's been publicly discussed before. We hope to  
10 apply for even more grants. So I can be clear, what  
11 we are trying to do is to get some assistance so that  
12 we can get better at this process, this administration  
13 application process, so we would be eligible for more  
14 federal assistance that's already existing.  
15 Q. And how much do you estimate that more federal  
16 assistance to be?  
17 A. I have no idea. Whatever -- whatever we can get. If  
18 it's several millions more, if it's several hundreds  
19 millions more, we're going to apply for it.  
20 Q. Do you think it's a possibility it could be hundreds  
21 of millions more?  
22 A. Possibility it could be.  
23 Q. Earlier in your testimony you were asked a lot of  
24 questions about legal analyses or legal claims that  
25 might have been made, and on those questions you

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1 Q. Is that going to happen under your supervision?  
2 A. I certainly hope so, yes.  
3 Q. Do you have any idea of how much money in grant  
4 programs might be available to the City?  
5 A. Well, the City has already applied of somewhere in the  
6 neighborhood of 300 million in 71 programs. We have  
7 been told that none of those 71 programs are in  
8 compliance. Some of those programs we're receiving  
9 technical assistance from HUD --  
10 COURT REPORTER: I need you to slow down.  
11 THE WITNESS: I'm sorry.  
12 A. Some of those programs we're receiving technical  
13 assistance, for instance, from HUD, and our intent is  
14 to get our grants administration and application  
15 process more up to date and streamlined so we can  
16 apply for as many grants as we can possibly get our  
17 hands on.  
18 BY MS. ENGLISH:  
19 Q. Okay. You confused me there for a minute because  
20 you've said you've got a bunch of grant applications  
21 already in with respect to programs that are  
22 noncompliant, but I thought you said earlier you don't  
23 have any grant applications in.  
24 A. No, no, no.  
25 Q. Okay.

1 claimed attorney-client privilege --  
2 A. Yes.  
3 Q. -- and said that you didn't have an independent view  
4 that didn't come from attorney-client communications.  
5 A. Yes.  
6 Q. Okay. I want to ask, without divulging what the  
7 advice was of your counsel, can you just list for me  
8 what the topics were on which you got advice, or would  
9 you claim the privilege as to just the topics as well?  
10 A. Maybe I can do it this way. I think I've said before  
11 that in this case, for instance, your client has filed  
12 an objection.  
13 Q. Yes, it has.  
14 A. And in this case many objections have been filed and  
15 many of the topics listed in those objections, and I  
16 think I said with Mr. Hackney, whether it was  
17 subordination, prioritization, equitable estoppel,  
18 tort, invalidation of liens ab initio, whatever they  
19 were, none of those analyses or claims came as a  
20 surprise to me and that in some fashion -- without  
21 divulging what I had spoken with to my counsel, in  
22 some fashion issues such as those had been discussed  
23 and analyzed with my counsel, attorneys and advisors.  
24 Q. So, for example, if -- as you know, Ambac filed an  
25 objection, and --

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1 A. Yes.

2 Q. -- one of the arguments raised was whether the Swap  
3 obligations themselves were void ab initio because  
4 they did not comply with Act 34.

5 A. Yes.

6 Q. You're familiar with that argument that we raised?

7 A. Yeah.

8 Q. Can you -- and again without asking -- I'm not asking  
9 you to divulge what the advice was or what the  
10 analysis was you got from your counsel, but can you  
11 tell me what issues, just by naming the topics, you  
12 sought advice on with respect to that argument?

13 MR. SHUMAKER: Well, the seeking of advice  
14 somewhat implicates communications. If you were to  
15 look at topics perhaps as to whether he regarding your  
16 objection whether he -- they were raised, without  
17 going into the communications, I think he could  
18 respond to that.

19 BY MS. ENGLISH:

20 Q. That's exactly what I'm asking.

21 A. Okay. Well, for instance, whether or not arguments  
22 such as that would erase the obligation in toto or  
23 subordinate it to a lower level, whether or not an  
24 obligation like that would raise defenses on behalf of  
25 the obligor of equitable estoppel to the City, whether

1 prepared, analyses, I can't give you a compendium or  
2 an exhaustive list of things that were considered, so  
3 I don't want to leave you with the misimpression that  
4 somehow the analysis wasn't complete or we didn't  
5 consider more issues than the one I did. We did.  
6 Those are just the ones that came, sitting here  
7 today -- you asked me a question -- off the top of my  
8 head that I remembered for instance.

9 Q. Did you have legal analysis done on whether the Swaps  
10 transactions complied with Act 34?

11 A. As I said, without getting into discussions with my  
12 counsel, a whole panoply of issues, some of which are  
13 contained in the objections filed, including those  
14 filed by your client, were examined.

15 Q. Okay. Now can you answer my question? Did you have  
16 legal analysis done on whether the Swap transactions  
17 complied with Act 34?

18 A. As I said --

19 MR. SHUMAKER: Objection, asked and  
20 answered.

21 A. As I said --

22 MR. SHUMAKER: If you want to share with  
23 him the argument, that might help.

24 A. There are a whole panoply of issues, some of them  
25 contained in the objections such as the one filed by

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1 or not there are facts surrounding those documents and  
2 liens that would equitably raise issues as far as  
3 their validity beyond void ab initio, whether or not  
4 the law in the district and the circuit supported a  
5 clean remedy that could be easily obtained, and  
6 whether or not it would be expensive and extensive  
7 litigation and appeals over a period of time, things  
8 such as those were discussed and examined.

9 Q. When you say whether there were equitable issues, what  
10 do you mean by that?

11 A. Here again, without going into discussion, any of the  
12 concern -- equity is -- implicates action such as  
13 clean hands. Whether there were issues surrounding  
14 the City's conduct and issues along those lines, that  
15 would be factually intensive and lead to, for  
16 instance, increased litigation costs which I think is  
17 mentioned in our motion or some of the papers we  
18 filed, things along those lines, general equitable  
19 concerns.

20 Q. When you just listed for me the types of concerns and  
21 topics you were exploring with counsel, you didn't  
22 mention Act 34.

23 A. Well, as I said, I said for instance. I didn't mean  
24 for it to be an exhaustive list, and that's why  
25 without sitting here today, counsel, memos that were

1 your client which were examined and reviewed.

2 BY MS. ENGLISH:

3 Q. Was Act 34 one of them?

4 A. More than likely, yes.

5 Q. More than likely? You don't know?

6 A. No. Sitting here today, I just said to you, for  
7 instance, that many of the issues, without being a  
8 compendium or being exhaustive, were examined. Act 34  
9 was probably one of them. I did not mean for my  
10 testimony to be exhaustive because I don't have the  
11 analyses or the benefit of discussing them with my  
12 client prior to your question today.

13 Q. I do understand the answers that you're giving me.  
14 They're just not quite answers to the questions I'm  
15 asking.

16 A. Okay.

17 Q. So let me -- in your answer right now when I was  
18 trying to hone in on was Act 34 --

19 A. Um-hm.

20 Q. -- examined, right?

21 A. Yes.

22 Q. You said probably.

23 A. Yes.

24 Q. So you're not sure?

25 A. No. I said --

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1 **MR. SHUMAKER:** Objection, asked and  
2 answered.  
3 **A.** I'll say it again. Probably means that it was, but I  
4 don't want my answer to represent to you that it was a  
5 compendium. If you want to keep asking me about Act  
6 34, that's fine, but I said more likely than not it  
7 was examined. I -- just sitting here right now, I  
8 don't have an independent recollection of all the  
9 things we examined. Act 34 was more than likely one  
10 of them.

11 **BY MS. ENGLISH:**

12 **Q.** Okay. But sitting here today you don't have an  
13 independent recollection for sure that Act 34 was  
14 looked at; is that correct?

15 **A.** I just said --

16 **MR. SHUMAKER:** Objection, asked and  
17 answered.

18 **A.** I just said it's more likely than not.

19 **BY MS. ENGLISH:**

20 **Q.** Sitting here today do you have a recollection as to  
21 whether there was legal analysis done as to the  
22 validity of the pledge of casino revenues under the  
23 gaming act?

24 **A.** I thought you just asked -- well, suffice it to say I  
25 believe so.

1 counterparties?

2 **A.** Not without the advice of counsel, no.

3 **Q.** Why didn't the City just sue the Swap counterparties  
4 and then negotiate from there?

5 **A.** You know, one of the things that we have, both in  
6 bankruptcy and in Public Act 436, is that in the  
7 deliberative process the emergency manager has  
8 discretion to make decisions, business judgment  
9 decisions, within that discretion, irrespective of  
10 third parties, the decisions as to how that should  
11 have occurred.

12 We made a decision in consultation with  
13 counsel that this was the best way to proceed.  
14 Commencing litigation might well have created a  
15 cascade of other events such as the very event we are  
16 trying to avoid which is trapping the casino revenue  
17 for time and a number of months and/or years which  
18 would have made the probability of me completing my  
19 mission within the time frame of the statute  
20 difficult.

21 **Q.** If the City couldn't get a deal such as the  
22 forbearance agreement, was the City prepared to sue  
23 the Swap counterparties then?

24 **MR. SHUMAKER:** Objection to the extent that  
25 question is asking for attorney-client privileged

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1 **Q.** You believe so?

2 **A.** Yes.

3 **Q.** Are you sure?

4 **A.** I believe so.

5 **Q.** Are you sure?

6 **A.** I believe so.

7 **MR. SHUMAKER:** Objection, asked and  
8 answered.

9 **BY MS. ENGLISH:**

10 **Q.** Do you recall seeing a legal analysis or memo that was  
11 prepared with respect to the validity of the pledge of  
12 casino revenues under the gaming act?

13 **A.** Ms. English, I see -- I see a lot of memos. As I said  
14 before this line of questioning, it's more likely than  
15 not that I did, but sitting here today, in an effort  
16 to be accurate, I don't specifically recall all of the  
17 issues we examined. More likely than not, it included  
18 Act 34, it included validity of liens.

19 **COURT REPORTER:** It included validity --

20 **THE WITNESS:** Validity of liens.

21 **COURT REPORTER:** Thank you.

22 **BY MS. ENGLISH:**

23 **Q.** Did you make an independent assessment apart from  
24 advice of counsel as to the strengths -- strengths or  
25 weaknesses of the City's claims against the Swap

1 communication. I'll object.

2 If you have some independent understanding,  
3 you can answer.

4 **A.** Mrs. English, I'll say this. Without getting into  
5 communications with my counsel, we examined all  
6 alternatives, and as I said earlier with Mr. Hackney,  
7 including potential litigation.

8 **BY MS. ENGLISH:**

9 **Q.** If you hadn't gotten a deal, were you prepared to sue  
10 them then?

11 **MR. SHUMAKER:** Objection, calls for  
12 speculation.

13 **A.** Yeah, I was going to say. I don't know. We'd have to  
14 examine the situation on the ground at that time.

15 **BY MS. ENGLISH:**

16 **Q.** Okay. Let me ask you this. If the forbearance  
17 agreement is not approved by the bankruptcy court,  
18 will the City then sue the Swap counterparties?

19 **MR. SHUMAKER:** Objection, calls for  
20 speculation.

21 **A.** Here again, it's a different version of the prior  
22 question which it calls me to speculate as to what we  
23 would do if the Court does not approve the agreement.

24 **BY MS. ENGLISH:**

25 **Q.** If there were to be litigation with the Swap

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1 counterparties, do you have some sense as to what  
2 claims might be asserted against the Swap  
3 counterparties?

4 **MR. SHUMAKER:** Objection, asked and  
5 answered.

6 **A.** Yeah, as we said before, those are discussions that  
7 I've had with my counsel. I would consult with them  
8 as to our possible -- I can't tell you in direct  
9 response to your question and this line of questioning  
10 what we would do. What I can tell you is that we  
11 would engage in a process of examining what our  
12 alternatives were and try to make an informed and  
13 reasonable decision based upon the information we had  
14 at that time.

15 **BY MS. ENGLISH:**

16 **Q.** Okay. So sitting here today you are not able to tell  
17 me even a single claim that the City might assert  
18 against the Swap counterparties?

19 **A.** There are a number of claims that the City might  
20 assert. As I said earlier today, some of them might  
21 be framed in some of the objections. Whether or not  
22 we would ultimately assert those, depends upon a  
23 number of different factors that we would have to  
24 examine at that point.

25 **Q.** Well, in the forbearance agreement, the City is giving

1 would say that, as I said before this afternoon, there  
2 was analysis of the potential claims, strengths and  
3 weaknesses and options available to the City.

4 Those -- some of those were prepared in writing, yes.

5 **Q.** You just mentioned a draft complaint. Was there ever  
6 a draft complaint prepared?

7 **MR. SHUMAKER:** I think you mischaracterized  
8 what he said. That's my objection.

9 **A.** Yeah, as I said, some of those types of things could  
10 include a draft complaint. I don't recall seeing a  
11 draft complaint.

12 **BY MS. ENGLISH:**

13 **Q.** Do you recall seeing a memo that outlined strengths  
14 and weaknesses of claims that could be asserted in a  
15 complaint?

16 **A.** As I said before, I think there were memorandum and  
17 advice that was given regarding the various claims,  
18 defenses and alternatives available to the City which  
19 could have included a memorandum of the nature you're  
20 talking about.

21 **Q.** It could have included it --

22 **A.** It could.

23 **Q.** -- but you're not sure whether it did or not?

24 **A.** Sitting here today I don't specifically remember all  
25 the memos that would fit the description that you're

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1 up the right to assert claims against the Swap  
2 counterparties, correct?

3 **A.** If the forbearance agreement is approved and we  
4 ultimately execute on the agreement, then yes, the  
5 parties would forebear and would not sue each other.

6 **Q.** Right. So all I'm asking is give me one example of  
7 one claim you're giving up in the forbearance  
8 agreement.

9 **A.** I suppose any of the claims that have been implicated  
10 in some of the objections that have been filed and, as  
11 I said earlier today, some of those claims which is  
12 the ones we discussed a few minutes ago, such as  
13 estoppel, ab initio and those others.

14 **Q.** Did any of your legal counsel ever prepare a memo or a  
15 written analysis for the City that outlined a  
16 litigation strategy against the Swap counterparties?  
17 I'm not asking what would have been in it, if there  
18 was one. I just want to know if there was any written  
19 analysis ever prepared that outlined a litigation  
20 strategy.

21 **A.** Well, without, here again, drawing into the  
22 nomenclature of a litigation strategy, because that  
23 can mean a number of different things, including up --  
24 up to and through attaching a proposed complaint, for  
25 instance, without getting into the nomenclature, I

1 making. There were memos discussing the various  
2 strengths and weaknesses of the positions.

3 **Q.** Did you have any analysis done as to the cost of a  
4 litigation with the Swap counterparties?

5 **A.** No. I don't recall if any of the documents included  
6 costs. We -- there were discussions about the  
7 potential costs and the timing, but I don't recall if  
8 any of the documents did.

9 **Q.** Okay. What was your best estimate as to how much a  
10 litigation with Swap counterparties would cost the  
11 City?

12 **A.** I don't -- I don't remember what the best estimates  
13 were. They -- they ranged from --

14 **MR. SHUMAKER:** Object. I just want to make  
15 sure you're not going to be revealing any  
16 attorney-client communications with your answer.

17 **THE WITNESS:** Okay.

18 **MR. SHUMAKER:** I'll interject that. I'll  
19 let you answer the question as to whether that was  
20 addressed. I don't want you to go --

21 **THE WITNESS:** Okay.

22 **MR. SHUMAKER:** -- into anything --

23 **THE WITNESS:** Okay.

24 **MR. SHUMAKER:** -- beyond that.

25 **A.** It was addressed, and suffice it to say I think it's

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1 fair to assume that in litigation in the nature you're  
2 discussing that it could go into millions of dollars.

3 BY MS. ENGLISH:

4 Q. How about the time it would take to litigate the Swap  
5 counterparties? Did you estimate how long it would  
6 take?

7 MR. SHUMAKER: Same admonition.

8 A. Let's -- let's do it this way. I think it's fair to  
9 say that there were discussions regarding the time for  
10 litigation and/or appeals and the costs that were  
11 involved if that tack was taken.

12 BY MS. ENGLISH:

13 Q. How long did you estimate it would take to litigate  
14 with Swap counterparties?

15 A. I'm not sure the predicate is there that I estimated  
16 the length of time.

17 Q. Okay. If you didn't estimate the length of time,  
18 that's an okay answer to give.

19 A. Yeah. I'm trying to be as clear as I can for you and  
20 say that there were discussions, but there's nothing  
21 as specific as the lodestar method of analysis which  
22 you understand is time times hours billed, so on and  
23 so forth. There were discussions and there were  
24 analyses about what it could be.

25 Q. Now, I have to unpack that a little bit because you

1 Q. Did you have a lodestar analysis performed with  
2 respect to a litigation with the Swap counterparties?

3 MR. SHUMAKER: Again, I'm going to object.

4 I believe that that question asks the -- asks Mr. Orr  
5 to reveal privileged attorney-client communications  
6 when you get into specific lodestar analysis.

7 BY MS. ENGLISH:

8 Q. I don't want the analysis. I just want to know  
9 whether had you one done because you mentioned it.

10 A. I did mention it, but, here again, I think my response  
11 was that there was an analysis that was done. I'm not  
12 sure. I don't recall if it was as specific as the  
13 type of lodestar analysis to give you an example, and  
14 without going into conversation between me and my  
15 counsel, I say again, we did an analysis and had  
16 discussions regarding potential claims and defenses  
17 that could be asserted, the potential length of time  
18 it would take and the significant cost that might be  
19 incurred by the City.

20 Q. I'm going to move on.

21 A. Okay. Sure.

22 Q. Did the City obtain approval from the Michigan  
23 Department of Treasury for the COPs or the Swap  
24 obligations, do you know?

25 A. You mean initially?

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1 mentioned the lodestar analysis, one of my favorite  
2 friends. Did you have a lodestar analysis done for  
3 litigation with the Swap counterparties?

4 MR. SHUMAKER: Objection, this is getting  
5 into the -- the specific communications between  
6 Mr. Orr and his counsel when you start to go through  
7 what -- what are the particulars of the advice that  
8 was being given. I allowed you to go forward with  
9 whether he considered the length of litigation in his  
10 answer, but I don't want him to go into the specifics  
11 of any sort of analysis that was done by counsel.

12 With that admonition, you can answer.

13 A. Again, without going to the specifics of discussion  
14 I've had with counsel, there were discussions about  
15 potential length of litigation and appeals and the  
16 potential cost. Those discussions included time that  
17 may have impaired my ability to complete my obligation  
18 within the time frame provided by Public Act 436, as  
19 well as significant costs, litigation cost being  
20 incurred by the City.

21 BY MS. ENGLISH:

22 Q. Okay. Here is my question again, because in your  
23 answer you mentioned lodestar analysis, so I'm just  
24 asking -- it's a yes or no question.

25 A. Um-hm.

1 Q. Yeah.

2 A. I don't know. Well, wait a minute. Wait a minute.

3 I recall seeing a letter some time ago on  
4 official Michigan State letterhead -- well, I recall  
5 seeing a letter. It may have been some form related  
6 to the COPs. I just don't remember specifically, but  
7 I do recall seeing a letter on Michigan letterhead  
8 related to the transaction.

9 Q. Okay. So I'm going to put in a request to your  
10 counsel.

11 MS. ENGLISH: If there is an approval or a  
12 letter from the Michigan Department of Treasury with  
13 respect to the COPs or the Swaps, we'd like to request  
14 a copy of that.

15 MR. SHUMAKER: We'll look into it.

16 MS. ENGLISH: Thanks.

17 BY MS. ENGLISH:

18 Q. Here's another one I don't know if you know the answer  
19 to this.

20 A. Right.

21 Q. Do you know if the City approved the offering circular  
22 that went out with respect to the COPs?

23 A. I do not.

24 Q. You mentioned earlier that you were on conference  
25 calls with Ken Buckfire and the principals of the Swap

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1 counterparties?  
 2 **A. Yes.**  
 3 Q. Did you -- on any of those calls, did you ever take  
 4 the position that the Swaps were invalid or void?  
 5 **A. I don't recall if we had any discussions of that**  
 6 **nature on any of those calls.**  
 7 Q. Do you recall whether you ever took the position that  
 8 the liens were invalid or not secured?  
 9 **A. Likewise, I don't recall if we had discussions of that**  
 10 **nature on those calls.**  
 11 **Q. Do you recall whether you ever discussed with any of**  
 12 **the Swap counterparties the City's potential legal**  
 13 **arguments as against the Swap counterparties?**  
 14 **A. Did I?**  
 15 **Q. Yeah.**  
 16 (Whereupon Robert Hertzberg left the  
 17 deposition at 2:49 p.m.)  
 18 **A. No, I don't think I had though those discussions. No.**  
 19 **BY MS. ENGLISH:**  
 20 **Q. Did you ever debate the validity of the Swap**  
 21 **counterparties secured position with anyone from the**  
 22 **Swap counterparties?**  
 23 **A. Did I personally?**  
 24 **Q. Yes.**  
 25 **A. No.**

1 which is really just one table on two pages, right?  
 2 **A. Right.**  
 3 Q. And --  
 4 **A. Well, let me make sure. Yes.**  
 5 Q. You know what, so there's ECF numbers at the bottom --  
 6 **A. Yes.**  
 7 Q. -- but there's also numbers in the -- that were part  
 8 of the original document and it's the original numbers  
 9 that I'm looking for, page 97 and 98.  
 10 **A. Okay.**  
 11 Q. On the top it says restructuring scenario.  
 12 **A. Okay. I'm sorry, I was looking at the electronic case**  
 13 **number. -**  
 14 Q. Yeah, my bad.  
 15 **A. 97 and 98. Here we go. Okay.**  
 16 Q. Okay. Now, if I understand this table that spans  
 17 pages 97 and 98 correctly, this is the City's  
 18 restructuring proposal, if you will; is that correct?  
 19 **A. Yes.**  
 20 (Whereupon Robert Hertzberg entered the  
 21 deposition at 2:51 p.m.)  
 22 **BY MS. ENGLISH:**  
 23 Q. Okay. And if we just look down say the column for  
 24 2014, we've got total revenues, net operating surplus,  
 25 readjustment expenses. And then if you go to page 98,

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1 Q. I want to show you a document you're very familiar  
 2 with.  
 3 **A. Um-hm.**  
 4 Q. So what exhibit are we up to now? Exhibit 6?  
 5 **A. Yeah.**  
 6 Q. Orr 6?  
 7 **A. Yes.**  
 8 **MS. ENGLISH:** Lally, can you pass me my  
 9 binder?  
 10 **MARKED FOR IDENTIFICATION:**  
 11 **DEPOSITION EXHIBIT 6**  
 12 **2:50 p.m.**  
 13 **BY MS. ENGLISH:**  
 14 Q. Okay. You recognize this document, don't you,  
 15 Mr. Orr?  
 16 **A. Yes. I assume it's an accurate representation of my**  
 17 **June 14th proposal to creditors.**  
 18 Q. Okay. And this is a document that you put together  
 19 largely, with help I'm sure, but you were responsible  
 20 for putting this together, right?  
 21 **A. This is a document that I and my team put together.**  
 22 Q. Okay. I'd like you to turn to pages 97 and 98 of the  
 23 document.  
 24 **A. Yes.**  
 25 Q. Okay. These are -- there's two forecast tables here

1 we get down to a list of secured claims of the City.  
 2 **A. Yes.**  
 3 Q. Okay.  
 4 (Whereupon Kelly DiBlasi left the  
 5 deposition at 2:52 p.m.)  
 6 **BY MS. ENGLISH:**  
 7 Q. And there's a line item there for POC Swaps. Do you  
 8 see that?  
 9 **A. Yes.**  
 10 Q. And that line item is actually the Swaps we're talking  
 11 about today that you proposed to settle through the  
 12 forbearance agreement, correct?  
 13 **A. Yes.**  
 14 Q. Okay. And that line item, if you go right straight  
 15 across, shows roughly 50 million dollars a year being  
 16 paid; is that right?  
 17 **A. Yes.**  
 18 **Q. So this restructuring proposal, if I'm reading this**  
 19 **correctly, is assuming that the City is going to**  
 20 **continue to pay its monthly Swap payments; is that**  
 21 **correct?**  
 22 **A. Yes. I think there's a footnote there at the top that**  
 23 **says -- at the bottom, it says, "Assumes continued**  
 24 **payments as scheduled. Treatment to be determined."**  
 25 Q. Okay. So this restructuring proposal then -- well,